1486. b. 59.

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THE

Practical Justice

OF

PEACE:

OR,

A TREATISE ſhewing the POWER and AUTHORITY of that OFFICER in all its Branches.

Extracted from the ſeveral Books hitherto written on that Subject, and digeſted under proper Titles, in an Alphabetical Method.

To which are added,

Great Variety of the moſt uſeful Precedents, inſerted under their Proper HEADS.

Together with

An ALPHABETICAL TABLE of all thoſe STATUTES which relate to the TITLES contained in this WORK, and of the TITLES themſelves.

The Whole fitted for the Uſe of Juſtices of Peace, Coroners, Sheriffs, Clerks of Aſſize, and of the Peace, Commiſſioners of Sewers, Overſeers of the Poor, Surveyors of the Highways, Church-wardens, Conſtables, and others.

The Second Edition, corrected and amended, with large Additions, and a Continuation of all the Statutes to the End of the laſt Seſſion of Parliament.

By *JOSEPH SHAW*, of the *Middle Temple*, Eſq;

In Two Volumes.

VOL. I.

In the SAVOY: Printed by E. and R. NUTT, and R. GOSLING, (Aſſigns of *Edward Sayer*, Eſq;) for Meſſieurs Ward and Wicksteed, in the *Inner Temple Lane*. M DCC XXXIII.

1733

421/4

To the Right Honourable

PETER Lord *KING*,

Baron of Ockham,

Lord High Chancellor of *Great Britain*.

My Lord,

THIS Treatiſe concerning the Office of his Majeſty's Juſtices of the Peace, is by Your Lordſhip's *eſpecial Permiſſion*, moſt humbly dedicated to You, by

Your Lordship's

Moſt Devoted, and

Dutiful Servant,

Joseph Shaw.

To the Right Honourable

PETER Lord KING,

Baron of OCKHAM,

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of Great Britain.

MY LORD,

THIS Philosophic con-
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JOSEPH SHAW.

THE PREFACE.

THE Duty and Office of a Juſtice of Peace have been ſo much enlarged of late Years, by the Authority of the Legiſlature, that it has been found very neceſſary to add one more to the Number of Books already written on this Subject; And we hope the preſent Undertaking will meet with a candid Reception from the Publick, ſince it has been the principal Deſign of the Author to keep clear of the Errors and Defects of the other Performances of this Kind.

Some of which, it muſt be acknowledged, have been very Voluminous, and many Things inſerted which have been foreign to the Purpoſe; others too Conciſe, and by that Means obſcure; many of them very Erroneous, whereby ſeveral Juſtices have frequently been drawn into great Miſtakes, and moſt of them Defective in the Buſineſs created by the later Statutes, and that more eſpecially as to the practical Part.

To remedy theſe Inconveniencies, the Author has taken the utmoſt Care to render this Work as uſeful as poſſible, by throwing the Whole into a ſtrict Alphabetical Order; and thereby placing before the Reader, at one View, the Subſtance of whatever has been written upon each Subject, both in the Common and Statute Law; and at the ſame Time ſupplying him with a Collection of the newſt Precedents of every Kind, which he will find regularly inſerted under their proper Heads.

This

The PREFACE.

This Method, the Author is ſatisfied, will be of ſingular Uſe to thoſe Juſtices of the Peace and others, who have but little Leiſure or Opportunity to ſearch the many Volumes of Reports and Statutes, from which the following Treatiſe has been collected; and he hopes it may not be altogether uſeleſs to the Gentlemen at the Bar, if conſulted only as an Abridgment of this Kind of Learning contained in the larger Books; the Peruſal whereof is ſo neceſſary to their Profeſſion.

And ſince all the Acts of Parliament which have any Relation to the Office of a Juſtice of the Peace, are carefully continued and brought down to the End of the laſt Seſſion of Parliament; it is hoped this Treatiſe will appear, both for Matter and Method, the compleateſt upon the Subject; and that it will prove as Beneficial to the Publick as it was at firſt deſigned.

Midſummer-Day, 1732. J. S.

☞ *The Author thought it needleſs to repeat the Directions of the Warrants throughout the Book, and therefore the Reader is deſired to take Notice, that where-ever he meets with any Warrant not directed to the proper Officer who is to execute it, that all ſuch Warrants are to be directed to* The Conſtable or Conſtables, High Conſtable, Surveyor of the Highways, Churchwardens, Overſeers of the Poor, *&c. as the Nature of the Warrant ſhall require.*

THE PRACTICAL Justice of Peace, &c.

Of Conservators of the Peace at Common Law.

THE King or Sovereign of this Realm is the principal Conservator of the Peace thereof, from whom the Administration of Justice, and the Jurisdiction of all Causes are originally derived. The King. Dalton 1.

The Lord Chancellor or Keeper, Lord High Steward, Lord Marshal and High Constable and Lord Treasurer of *Great Britain*, and every Justice of the King's Bench, and Master of the Rolls, * are Conservators of the Peace throughout this Realm, and may award Precepts, and take Recognizances for the Peace by Virtue of their Places, and upon not finding Sureties for the same, may commit to Prison. The great Officers of the Realm. Dalt. 1. *And yet for the Master of the Rolls it is held, that he maketh Process, and taketh Recognizance, not as incident to his Office (as all the others may, but by Prescription.

The Justices of the Court of Common Pleas, Barons of the Exchequer, and Justices of Assize, *Nisi prius*, *Oyer* and *Terminer*, and General Gaol-Delivery, in their respective Courts, and the Chamberlain of *Chester*, * in that County Palatine, are Conservators of the Peace; and if Judges within their View, Dalt. 2. * The Chamberlain of Chester is Judge of the Court of Exchequer there, which hath the Jurisdiction of a Court of Chancery, and is by Virtue of his Office a Conservator of the Peace there, as was certified by Sir James Dyer, and the Justices of the Court of C. B. to Q. El.

the Offenders be within their View, may ſend their Officers to bring them before them, and for want of Sureties may commit them, but not grant Warrants for the Peace; But theſe Conſervators now a-days have Commiſſions by which they act.

Courts of Record. Dalt. 3.

The Stewards of the Sheriffs Turn, of a Leet, of a Court of Pipowder, and all other ſuch Courts of Record, are Conſervators of the Peace within their ſeveral Courts, and may commit for an Affray done in their ſeveral Courts while they are executing their Offices, and may alſo impoſe a Fine for Contempt, but not grant Warrants for the Peace.

Sheriff. Coroners. Dalt. 3.

The Sheriff is a Conſervator of the Peace in his County, and may take Sureties for the Peace *ex officio*; and ſo alſo are the Coroners.

High Conſtables. Dalt. 3.

High Conſtables are Conſervators of the Peace, and at their Petty Seſſions may commit for an Affray.

Petty Conſtables and Tithingmen are Conſervators. Dalt. 4.

Petty Conſtables are Conſervators of the Peace *ex officio*; ſo Borſholders, Thirdboroughs, Tithingmen, and Headboroughs have the like Authority, at leaſt in their Abſence; for otherwiſe they are but Aſſiſtants to them in the Pariſh at large, *viz.* ſuch Pariſhes as have Conſtables, for otherwiſe they differ but in Name: All theſe may make Deputies, becauſe but in miniſterial Offices. *Mich.* 13 *Jac. B. R. Philips* and *Winſcoms*'s Caſe.

May command the Aſſiſtance of others. Dalt. 5.

All Conſervators of the Peace may command the Aſſiſtance of others to arreſt all ſuch who in their Preſence ſhall break the Peace; and for their Neglect herein may be puniſhed by Indictment. 3 *Inſt. fol.* 158.

Conſtable negligent or refuſing may be fined. Dalt. 5.

And if a Conſtable being called or required to ſee the Peace kept, refuſeth, or ſhall be negligent therein, he may be indicted and fined for the ſame.

Of the Original, Power, Authority, &c. of Juſtices of Peace at this Day in General.

Original of Juſtices of Peace. 1 Ed. 3. c. 16.

THERE are ſeveral Opinions concerning the Original of Juſtices of Peace: *Polydore Virgil* tells us they began under *William the Conqueror*. My Lord *Coke* ſays, That in *Eaſter* Term 6 *Ed.* 1. *Prima fuit Inſtitutio Juſticiariorum pro pace conſervanda.* Mr. *Pryn* in his Animadverſions upon him ſays, That *Hen.* 3. after the Agreement made between him and the Barons, did conſtitute Guardians *ad pacem conſervandam*: But the learned

ed Antiquary Sir *Henry Spelman* ſays, That they were made by *Edward* 3. 1327. in the Beginning of his Reign, on Purpoſe to ſuppreſs Commotions which might happen in dethroning *Edward* 2. For there were extraordinary Conſervators of the Peace appointed in Times of imminent Danger, either from Rebels or foreign Invaders, to take Care of and defend particular Diſtricts committed to their Charge, and to preſerve the Peace within their Limits; and theſe had Power to command the Sheriff with his whole *Poſſe* to aid and aſſiſt them. *Lamb. lib.* 1. *c.* 3. And being appointed by the King's Commiſſion in every County to keep the Peace, they were therefore called *Cuſtodes & Guardiani pacis.* But by another Statute 36 *Edw.* 3. *c.* 12. they were called Juſtices of Peace, which Name continues to this Day; and ſince *Cuſtodes Pacis* and Juſtices of Peace have been adjudged to be the ſame. P. 10. *Ja.* 1. *B. R. Rex* verſus *Little.* And by the Statute 2 *Hen.* 5. *c.* 1. *Stat.* 2. Juſtices of the Peace ſhall be made of the moſt ſufficient Perſons dwelling in the ſame County, by the Advice of the Chancellor and King's Council.

36 Edw. 3.

The Number of theſe Magiſtrates at firſt was uncertain as at this Day; but 12 *Ri.* 2. *cap.* 10. a Law was made, That there ſhould be no more than ſix in each County, with the Juſtices of Aſſize; and this Number by a Statute made 14 *Ric.* 2. *c.* 11. was increaſed to eight. *Dalt. p.* 9. This Law is not abrogated at this Day, tho' the Number of Juſtices is greatly increaſed in every County, and is now uncertain at the King's Pleaſure: 'Tis true, in *Wales* there were but eight in a County, by a Clauſe in the Stat. 34 & 35 *Hen.* 8. but by the 5th of *William* and *Mary*, that Clauſe is repealed.

Number of them by 12 R. 2. cap. 10, was Reduc'd to ſix, and increaſed to eight in a County, Number now uncertain.

The Power of conſtituting Juſtices of Peace is now only in the King, which formerly in Part was delegated to others, but is ſince reaſſumed by the Statute of 27 *Hen.* 8. *cap.* 14. and this is uſually done by the Advice and Nomination of the Lord Chancellor or Lord Keeper.

By whom Juſtices of the Peace are conſtituted. Dalton 10.

There are three Sorts of Juſtices of Peace;

1. Such as have been anciently created by Act of Parliament; as the Biſhops of *Ely* and their Temporal Stewards are Juſtices of Peace within the Iſle of *Ely*; and ſo the Archbiſhops of *York*, and the Biſhops of *Durham* and their Temporal Chancellors by Statute 27 *Hen.* 8.

Three Sorts of Juſtices of Peace, 1. By Act of Parliament, Dalt. 10.

2. By Charter. Dalt. 10.

2. Such as have been created by the King's Letters Patent under the Great Seal (and by his Bill aſſigned) as Mayors, and the chief Officers of divers corporate Towns, who are Juſtices of Peace within their Limits by their Charters; and ſuch the King cannot diſcharge again at his Pleaſure, but they ſhall continue and enjoy their Juriſdiction according as their Charters enable them. And therefore if the King do make out a Commiſſion of the Peace to others in the ſame Place, yet the Authority and Juriſdiction of the Mayor, *&c.* remaineth good, for that it was granted to them and their Succeſſors, and is not revokable at the King's Pleaſure, as the Commiſſion of the Peace is; but for Cauſe the Liberties may be ſeiſed, and likewiſe a concurrent Juriſdiction may be granted to others in the ſame Place.

See Stat. 18 E. 3. cap. 2. and 13 Rich. 2. cap. 7. and 17 Rich. 2. c. 10.

If the Juſtices by Letters Patent have any Commiſſion *ad Audiendum & Terminandum*, this Grant (as it ſeems) is void, unleſs ſome one Perſon learned in the Law, be joined with them. Theſe particular Sorts of Juſtices may execute all the Power given by Statutes to any Juſtice of Peace, but have not as large Authority as is uſually given by the Commiſſions.

Dalt. 10.

3. By Commiſſion under the Great Seal. Dalt. 11.

3. Such Juſtices of Peace as are created by the King's Commiſſion; Theſe are made of Courſe by Commiſſion under the Great Seal of *Great Britain*, and nominated and appointed by the Diſcretion of the Lord Chancellor or Lord Keeper. In *Lancaſhire*, they are under the Seal of the Dutchy, by Stat. 27 *Hen.* 8. *cap.* 24. In other Counties the Form of the Commiſſion is as follows.

The Commiſſion of the Peace.

GEorgius Dei Gratia Magnæ Britanniæ Franciæ & Hiberniæ Rex Fidei Defenſor, &c. Prædilecto & fideli Petro Domino King, Baroni de Ockham, Domino Summo Cancellario Magn' Britanniæ C. S. A. R. T. W. &c. ſalutem.

Sciatis quod aſſignavimus vos conjunctim & divisim & quemlibet veſtrum Juſticiarios noſtros ad pacem noſtram in Comitatu nõ Oxon' conſervandam ac ad omnia Ordinationes & Statuta p bono pacis noſtræ ac p conſervatione ejuſdem & p quieto regimine & gubernatione populi nři edita in omnibus & ſingulis ſuis articulis in dõo Comitatu nõo (tam infra libertates quam extra) ſu-

1. Aſſignavimus ad pacem conſervandam.

ta vim formam & effectum eorundem custodiend & custodiri faciendum Et ad omnes contra formam Ordinationum vel Statutorum illorum aut eorūm alicujus in Comitatu prēd delinquentes castigandum & puniendum prout secundum formam Ordinationum & Statutorum illorum fuerit faciendum. Et ad omnes illos qui alicui vel aliquibus de populo nostro de corporibus suis vel de incendio domorum suarum minas fecerint ad sufficientem securitatem de pace vel bono gestu suo erga nos & populum nostrum inveniendum coram vobis seu aliquo vestrum venire faciendum & si hujusmodi securitatem invenire recusaverint tunc eos in prisonis nostris (quousq; hujusmodi securitatem invenerint) salvo custodiri faciendum Assignavimus etiam vos & quoslibet duos vel plures vestrum (quorum aliquem vestrum A. B. C. D. E. F. unum esse volumus) Justiciarios nros ad inquirendum per sacramentum proborum & legalium hominum de Comitatu predicto (per quos rei veritas melius sciri poterit) de omnibus & omnimodis Feloniis veneficiis Incantationibus Sortilegiis Arte Magica Transgressionibus Forstallariis Regratariis Ingrossariis & Extortionibus quibuscunq; ac de omnibus & singulis aliis malefactis & offensis (de quibus Justiciarii pacis nre legitime inquirere possunt aut debent) per quoscunq; & qualitercunq; in Comitatu predicto factis sive perpetratis vel imposterum ibidem fieri vel attemptari contigerit Ac etiam de omnibus illis qui in Comitatu predicto in Conventiculis contra pacem nostram in perturbationem populi nostri seu vi armata ierint vel equitaverint seu imposterum ire vel equitare presumpserint Ac etiam de Hostelariis & aliis omnibus & singulis personis qui in abusu ponderum vel mensurarum sive in venditione victualium contra formam Ordinationum & Statutorum vel eorum alicujus inde pro communi utilitate Regni nostri Magnæ Britanniæ & populi nostri ejusdem editorum deliquerunt vel attemptaverunt seu imposterum delinquere vel attemptare presumpserint in Com' prēd Ac etiam de quibuscunque vicecomitibus Ballivis Senescallis Constabulariis Custodibus Gaolarum & aliis Officiariis qui in Executione officiorum suorum (circa premissa seu eor aliqua) indebite se haberunt aut in posterum indebite se habere presumpserint aut tepidi remissi vel negligentes fuerunt aut in posterum fore contigerint in Com' predicto Et de omnibus & singulis articulis & circumstantiis & aliis rebus quibuscunq & per quoscunq & qualitercunq in Com' prēd factis sive perpetratis vel que in posterum ibidem

2. Assignavimus.

fieri vel attemptari contigerint qualitercunq; premissorum vel eorum alicujus concernentibus plenius veritatem Et ad indictamenta quecunq; sic coram vobis seu aliquibus vestrum capta sive capienda aut coram aliis nuper Justiciariis Pacis im Com' pred' facta sive capta & nondum terminata inspiciendum Ac ad processus inde versus omnes & singulos sic indictatos vel quos coram vobis in posterum indictari contigerit (quousq; capiantur reddant se vel utlagentur) faciendum & continuandum Et ad omnia & singula felonias veneficia Incantationes Sortilegia Artes Magicas Transgressiones Forestallarias Regratorias Ingrossarias Extortiones Conventicula Indictamenta predicta ceteraq; omnia & singula premissa secundum Leges & Statuta Regni nostri Magnæ Britanniæ (prout in hujusmodi casu fieri consuevit aut debuit) audiendum & terminandum Et ad eosdem Delinquentes & quoslibet eorum pro delictis suis per fines Redemptiones Amerciamenta Forisfacturas, ac alio modo (prout secundum legem & consuetudinem Regni nostri Magnæ Britanniæ aut formam Ordinationum vel Statutorum predictorum fieri consuevit vel debuit) castigandum & puniendum.

Indictamenta capere.

Processus facere.

Ad audiendum & terminandum.

Proviso seu Exceptio.

Proviso semper quod si casus difficultatis super determinatione aliquorum premissorum coram vobis vel aliquibus duobus vel pluribus vestrum evenire contigerit tunc ad judicium inde reddendum nisi in presentia unius Justiciariorum nostrorum de uno vel altero Banco aut Justiciariorum nostrorum ad Assisas in Com' pred' capiendas assignatorum coram vobis vel aliquibus duobus vel pluribus vestrum minime procedatur.

Mandatum Justiciariis.

Et ideo vobis & cuilibet vestrum mandamus quod circa custodiam pacis Ordinationum Statutorum & omnium & singulorum ceterorum premissorum diligenter intendatis Et ad certos dies & loca que vos vel aliqui hujusmodi duo vel plures vestrum (ut predictum est) ad hec provideritis super premissis faciatis Inquisitiones & premissa omnia & singula audiatis & terminetis ac ea faciatis & exspleatis in forma predicta inde quod ad Justitiam pertinet secundum legem & consuetudinem Regni nostri Magnæ Britanniæ salvis nobis Amerciamentis & aliis ad nos inde spectantibus.

Mandat' Vic'.

Mandamus etiam tenore presentium Vic' nostro Oxon' quod ad certos dies & loca (que vos vel aliqui hujusmodi duo vel plures vestrum ut predictum est ei ut predictum est Sciri feceritis) Venire faciat coram vobis

vobis vel hujusmodi duobus vel pluribus vestrum (ut dictum est) tot & tales probos & legales homines de balliva sua (tam infra libertates quam extra) per quos rei veritas in premissis melius sciri poterit & inquiri.

Assignavimus denique te prefatum J. S. Mil' Custod' Rotulor' Pacis nostre in dicto Com' nostro Ac propterea tu ad dies & loca predicta Brevia Processus & Indictamenta predicta coram te & dictis sociis tuis venire facias ut ea inspiciantur & debito fine terminentur sicut predictum est In cujus rei testimonium, &c. Datum, &c. Custod' Rotulor'.

The Form of this Commission, as it now standeth, was settled by Sir *Christopher Wray*, Chief Justice of *England*, and all the Judges, *Mich.* 32 & 33 *Eliz.* *Dalt.* 20.

By the Conclusion of the Commission, the *Custos Rotulorum* shall have the keeping of the Records of the Sessions, and Indictments, Recognizances, &c. but not of Special Records, as of Riots, Precepts of the Peace, &c. not belonging to the General Sessions. Dalt. 19.

Two Lawyers (at least) shall be in the Commission of the Peace in every County. 18 *E.* 3. *cap.* 2. 34 *E.* 3. *cap.* 1. and 17 *R.* 2. *cap.* 10. Dalt. 9.

But notwithstanding a Justice of Peace be named in the above recited Commission; yet in Regard every Justice of Peace is taken to be within the Statute of 1 *Georgii*, (intituled, *An Act for the further Security of his Majesty's Person and Government, and the Succession of the Crown in the Heirs of the late Princess* Sophia, *being Protestants, and for extinguishing the Hopes of the pretended Prince of* Wales *and his open and secret Abettors*,) before he takes upon him to execute his Office, he must immediately after Divine Service and Sermon upon some Lord's Day within three Months after receiving his Authority, in some Parish-Church, receive the Sacrament of the Lord's Supper, according to the Usage of the Church of *England*, and before he take the following Oaths, shall in Court deliver a Certificate of the receiving the Sacrament under the Hands of the Minister and Churchwardens, and shall make Proof of the Truth thereof on the Oath of two credible Witnesses at the least: And at the Time of taking the said Oaths, he shall make and subscribe this Declaration. *I* A. B. *do declare, That I do believe, That there is not any Transubstantiation in the Sacrament of the Lord's Supper, or in the Elements of Bread and Wine, at or after the Consecration thereof by any Person whatsoever*; and then and there take the Oaths Stat' 1 Geo'. 25 C. 2. c. 2.

therein mentioned and appointed to be taken as follow, *viz.*

The Oath of Allegiance and Supremacy.

I A. B. *do ſincerely promiſe and ſwear, That I will be faithful, and bear true Allegiance to his Majeſty King* George.

So help me God.

I A. B. *do ſwear, That I do from my Heart abhor, deteſt and abjure, as impious and heretical, the damnable Doctrine and Poſition, that Princes excommunicate, or deprived by the Pope, or any Authority of the See of* Rome, *may be depoſed or murdered by their Subjects, or any other whatſoever. And I do declare, that no foreign Prince, Perſon, Prelate, State or Potentate hath or ought to have any Juriſdiction, Power, Superiority, Preheminence or Authority, Eccleſiaſtical or Spiritual within this Realm.*

So help me God.

The Oath of Abjuration.

I A. B. *do truly and ſincerely acknowledge and profeſs, teſtify and declare in my Conſcience before God and the World, That our Sovereign Lord King* George, *is lawful and rightful King of this Realm, and all other his Majeſty's Dominions and Countries thereunto belonging. And I do ſolemnly and ſincerely declare, That I do believe in my Conſcience, that the Perſon pretended to be Prince of* Wales *during the Life of the late King* James, *and ſince his Deceaſe pretending to be and taking upon himſelf the Stile and Title of King of* England, *by the Name of* James *the Third, or of* Scotland *by the Name of* James *the Eighth, or the Stile and Title of King of* Great Britain, *hath not any Right or Title whatſoever to the Crown of this Realm, or any other the Dominions thereto belonging; and I do renounce, refuſe and abjure any Allegiance or Obedience to him. And I do ſwear, That I will bear faithful and true Allegiance to his Majeſty King* George, *and him will defend to the utmoſt of my Power againſt all traiterous Conſpiracies and Attempts whatſoever which ſhall be made againſt his Perſon, Crown or Dignity. And I will do my utmoſt Endeavour to diſcloſe and make known to his Majeſty and his Succeſſors, all Treaſons and traiterous Conſpiracies which I ſhall know to be againſt him or any of them.*

And

And I do faithfully promiſe to the utmoſt of my Power to ſupport, maintain and defend the Succeſſion of the Crown againſt him the ſaid James, *and all other Perſons whatſoever; which Succeſſion by an Act,* (*intituled,* An Act for the further Limitation of the Crown, and better ſecuring the Rights and Liberties of the Subject) *is and ſtands limited to the Princeſs* Sophia *late Electreſs and Dutcheſs Dowager of* Hanover, *and the Heirs of her Body being Proteſtants. And all theſe Things I do plainly and ſincerely acknowledge and ſwear, according to theſe expreſs Words by me ſpoken, and according to the plain and Common Senſe and Underſtanding of the ſame Words, without any Equivocation, mental Evaſion, or ſecret Reſervation whatſoever. And I do make this Recognition, Acknowledgment, Abjuration, Renunciation and Promiſe heartily, willingly and truly, upon the true Faith of a Chriſtian.*

Which Oaths, if he neglect or refuſe to take, he is made incapable to enjoy his Office, to ſue any Action, Bill, Plaint, or Information, in any Court of Law, to proſecute any Suit in Equity, to be Guardian of a Child, or to be Executor or Adminiſtrator, or to be capable of any Legacy or Deed of Gift, or to be in any Office, or vote at any Election for Members of Parliament, and ſhall forfeit the Sum of 500 *l.* to be recovered by Action of Debt, Suit, Bill, Plaint or Information in any of the Courts at *Weſtminſter.* Stat. 1 *Geo.*

He muſt alſo take the following Oath relating to his Office.

The Oath of a Juſtice of Peace.

YOU do ſwear, That in the Office of a Juſtice of Peace, in and for this County of O. in all and every the Articles in his Majeſty's Commiſſion enjoined and to you directed, you will do equal Right to the Poor and Rich, according to your Knowledge, and the Laws and Statutes of this Realm: You ſhall not be of Counſel to any Perſon in any Quarrel depending before you: You ſhall hold your Seſſions according to the Direction of the Statutes in that Caſe made: And you ſhall cauſe to be entred the Iſſues, Fines and Amerciaments that ſhall happen to be made, and all Forfeitures without Concealment or imbezilling, and truly ſend and accompt for them to the King's Exchequer: You ſhall not ſpare any one for any Gift or other Cauſe, nor take any Thing for doing the Buſineſs of your Office of Juſtice of Peace, but the Fees and Allowances

lowances accuſtomed and fixed by Acts of Parliament: You ſhall not direct, nor cauſe to be directed, any Warrant by you made, to the Parties themſelves, but to the Bailiffs and Conſtables, &c. of the ſaid County, or other the King's Officers, or indifferent Perſons to execute the ſame: And in all Things you ſhall well and truly do and execute the Office of a Juſtice of Peace.

So help you God.

The Peace preſerved three Ways. Dal. 10.

A Juſtice thus ſworn may enter upon his Office. And the Peace is to be preſerved by theſe Juſtices of Peace 3 Ways; 1. Preventive by taking Surety for the keeping of it, or Good Behaviour. 2. Pacifying ſuch as are actually breaking it. 3. Puniſhing thoſe who have broke it.

The King by Commiſſion may grant the Execution of Statutes to whom he pleaſes. Dalt. 20.

The King by his Commiſſion may grant the Execution of one or more Statutes to whom he pleaſes, tho' the Statute give not ſuch Power; nay, of ſuch Statutes as were made before Juſtices of Peace were conſtituted, as the old Statutes of *Wincheſter*, and many more.

A Juſtice of Peace by the Word (Aſſignavimus) is conſtituted Conſervator of the Peace.

A Juſtice of Peace, by Virtue of the Word *Aſſignavimus* in the Commiſſion, is conſtituted Conſervator of the Peace, and hath thereby a ſeparate Power, and may do all Acts apart by himſelf for the Preſervation of the Peace, and may ſend his Warrant for the Party, and may take ſufficient Sureties of him by Recognizance, for keeping the Peace, or for the good Behaviour, as the Caſe ſhall require; and may ſend the Party to Gaol for not finding ſuch Sureties. *Vide Cro. Eliz.* 154.

Juſtices may execute any power mentioned in Statutes or their Commiſſion.

Where Statutes give Power to Juſtices of Peace, it may be executed by them, tho' not mentioned in their Commiſſion; (or if mentioned there) tho' not in the Statutes.

When a Statute gives a Penalty to be recovered before Juſtices of Peace, and preſcribes no Method for it, it ought to be by Bill. *Mich.* 2 *Ann. B. R. Salk.* 606.

Juſtices ought to be reſident in their Counties. Dalt. 9.

All Juſtices of Peace ought to be reſident and dwelling within their Counties (except Lords and Judges, *&c.*) 2 *Hen.* 5. *cap.* 4. and 2 *Hen.* 5. *Stat.* 2. *cap.* 1.

Single Juſtice can only admoniſh, where no Power given to ſingle Juſtice by Statutes. Dalt. 20.

Where Statutes are made for the Peace, and no Power therein given to a ſingle Juſtice, he only can admoniſh; and if not obeyed, prefer it to the Seſſions, where, by a Preſentment upon the Statute, the Party muſt be proſecuted.

Justices can't hold Pleas on Penal Statutes, without expreſs Power given to them by the ſaid Statutes.

Justices of Peace cannot hold Cognizance of Pleas upon penal Statutes, without an expreſs Power given to them by thoſe Acts, and without ſuch Authority, the Indictment, if taken, will be void. 1 *Mod. Rep.* 379. *Rex* verſus *Briggs. Term. Hill.* 6 *W.* 3. *B. R.*

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Nor do I find that they had any judicial Authority at firſt; but afterwards they were enabled by particular Statutes to hear and determine Felonies and Treſpaſſes; and therefore had Power to enquire of Murder, becauſe 'tis Felony. *Dyer* 69. And therefore Juſtices of Peace are to meddle only with ſuch Matters beſide their Commiſſion, as the Statutes give them Power, for they have all their Power by Statutes. *Savil's Rep.* 134. *Agard* verſus *Cavendiſh.*

Have a larger Power than the Conſervators had.

They are now Judges of Record, and have a larger Power than the Conſervators had; becauſe they could not ſend Warrants to bring Delinquents before them to be examined, which the Juſtices can now do, and may alſo commit where they ſee Cauſe.

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By the Statute of 18 *Ed.* 3. *cap.* 2. a Juſtice of Peace hath Power to hear and determine Felonies and Treſpaſſes, and to inflict Puniſhments. He hath the like Power by 43 *Ed.* 3. *cap.* 1. and likewiſe by 12 *R.* 2. *cap.* 19. he hath Power to proceed to the Deliverance of Thieves and Felons.

1 Ph. & M. cap. 13.
Juſtices do not determine great Felonies.

But tho' the aboveſaid Statutes do enlarge their Power, yet by a ſubſequent Law, *viz.* 1 & 2 *Ph. & M. cap.* 13. they are to certify the Examinations in Homicide and Felony to the Juſtices of Gaol-Delivery; therefore the Seſſions do not proceed to determine great Felonies, but for petty Larceny and other ſmall Felonies; they uſually try Offenders, or they may proceed in any Caſe where a Felony is by any Statute limited to be heard before them.

If any refuſe to be bound over, Juſtices may commit him.

Whereſoever a Juſtice of Peace hath Power by any Statute to bind over a Man, or to cauſe a Man to do any Thing, (if ſuch a Perſon being in his Preſence ſhall refuſe to be bound, or to do ſuch a Thing) it ſeems ſuch Juſtice may ſend ſuch Perſon to the Gaol, there to remain until he ſhall perform the ſame.

Juſtices may examine the Parties themſelves.

Where ſome Statutes do enable Juſtices of Peace to hear and determine by the general Word Examination without ſhewing of what Perſons: It ſeemeth that they may examine the Parties as well as other Witneſſes. *Lamb.* 535, 536.

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is determined. *Br. New Caſes f.* 11. *A. & B. Plowd.* 509.

Juſtice's ſingle Teſtimony of as great Force, as an Indictment by Jury.

In ſome Caſes, as in Force, Riots, Preſentments of Highways, a Juſtice of Peace's ſingle Teſtimony is of as great Authority as an Indictment upon the Oath of twelve Men, and in ſome other Caſes of greater Force than an Indictment.

Juſt. may take Examinations commit Offenders, and bind Proſecutors to Aſſizes,

And generally in all Caſes they may take the Examinations and commit the Offenders, and bind over the Proſecutors to the Aſſizes, where they ought to certify their Proceedings on Pain of being fined.

where they muſt certify their Proceedings.

A Juſtice not Judge in his own Caſe, unleſs aſſaulted, or a Forcible Entry on his own Poſſeſſion.

But in his own Caſe he is not Judge, and ought not to execute his Office, unleſs he is aſſaulted, and then he may commit the Offender: He may likewiſe record a Forcible Entry upon his own Poſſeſſion.

He ſhall not be puniſhed for any Thing done by him in Seſſions as a Judge.

When he juſtifies as a Juſtice of Peace, need not ſet forth his Commiſſion.

When he juſtifieth the Fact done by him as a Juſtice of Peace, he need not ſet forth his Commiſſion; becauſe he is a Judge of Record, and his Commiſſion remaineth with the *Cuſtos Rotulorum*.

He may take a Recognizance for the Peace.

He may take a Recognizance (for the Peace, *&c.*) which is a Matter of Record, and which none can do but a Judge of Record.

His Warrant not to be diſputed, but obeyed by the Conſtable.
Lamb. 67. 94.
14 Hen. 8.
Co. 10. 76.
1 Leon. 187.
Cro. Eliz. 130.

His Warrant (tho' it be beyond his Authority) is not diſputable by the Conſtable, or other inferior Miniſter, but muſt be obeyed and executed by them, who may be indicted for not executing it; but this muſt be underſtood when the Juſtice of Peace hath Juriſdiction of the Cauſe for or concerning which he hath granted his Warrant; for otherwiſe the Conſtable or other Officer executing their Warrant is puniſhable, notwithſtanding the Juſtice's Warrant.

He may ſend his Warrant to apprehend any Perſon accuſed of Felony.

He may ſend his Warrant to apprehend any Perſon accuſed of Felony, tho' the Accuſation be falſe; but not unleſs accuſed.

Noy 107. Whinnel verſus Stroud.

He may perſwade an Agreement between the Parties, where the King is to have no Fine.

But he may perſwade an Agreement between the Parties for ſmall Treſpaſſes; but not where the King is to have a Fine.

Nelſon 390.

One

One Juſtice cannot commit another for a Breach of the Peace, but the Seſſions may.

One Juſtice can't commit another, but Seſſions may commit him for a Breach of the Peace. Dalt. 8.

Juſtices of Peace may make a Record of a Force by them viewed, and may thereupon fine and impriſon the Offenders: Yea one Juſtice of Peace, in ſome Caſes may hear and determine Offences and puniſh an Offender as convict upon his own View, or upon the Confeſſion of the Offender, or upon Examination and Proof of Witneſſes.

One Juſtice may hear and determine ſome Offences.

Where the Matter is to be tried by Witneſſes, regularly two Witneſſes are requiſite: Otherwiſe it is where the Trial is by a Jury; for there one Witneſs ſufficeth, and many Times no Witneſſes at all are neceſſary.

Sometimes Witneſſes are requiſite, ſometimes none.

A Juſtice of Peace cannot bind over an Offender againſt a Penal Law, without being firſt indicted.

An Infant and Feme Covert ſeem both of them to be bound by every Statute in which they are not excepted. *Dyer* 104. *Pl.* 13. *Co. lib.* 11. *fo.* 61. Dr. *Foſter*'s Caſe, *Sed quære Bro. tit. Impriſ. cont'.*

Infant and Feme Covert bound by Statute, if not excepted.

Note, That Juſtices of Peace may enquire of ſuch Treſpaſſes; whereupon any Man may have an Action on the Caſe for Treſpaſs or Deceit. *Fitz. Juſtice f.* 12. B.

By Statute 12 *R.* 2. *cap.* 10. it was enacted, That Juſtices of Peace ſhould have 4*s. per Diem*, and the Clerk 2*s.* every Day they ſat in Quarter-Seſſions, to be paid by the Sheriff, who was to be allowed it in paſſing his Accounts; and if he neglected or refuſed to pay, an Action of Debt would lie againſt him. And ſince the 19 *Hen.* 7. and 15 *Eliz. c.* 9. they are to have alſo Part of the Forfeitures upon Conviction of Offenders againſt thoſe Laws: And by the Statute of Labourers, they are to have 5*s. per Diem* for every Day they ſhould ſit in Execution of that Act above three Days.

Juſtices of Peace may take 4*s.* and the Clerks 2*s.* for every Day they ſit in Quarter-Seſſions.

One or more Juſtices of Peace cannot make a Warrant upon a bare Surmiſe, to break any Man's Houſe open to ſearch for a Felon or ſtolen Goods. 4 *Inſt.* 177.

No Warrant by Juſtices to break open a Man's Houſe on bare Surmiſe of Felony, Juſtices muſt commit to the County Gaol. Legat's Caſe, Latch. 16. Brownlow p. 41.

Juſtices cannot impriſon, but in the common County-Gaol. *Co.* 9. *Rep.* 119. Lord *Sanquar*'s Caſe. But by Stat. 6. *G.* 1. *c.* 19. they may commit to the Houſe of Correction for ſmall Offences.

Officer may elect what Juſtice he will go before, unleſs a particular Warrant.

If the Warrant be to bring before him or any other Juſtice, it is at the Election of the Officer to which Juſtice he will go: Alſo a Warrant may be made to bring before a particular Juſtice. *Co. 5 Rep. fo. 59. Forſter's* Caſe.

If Juſtice refuſes to examine a Perſon robb'd, on Requeſt, an Action will lie.

If a Juſtice of Peace refuſes to examine a Perſon robb'd, on Requeſt, an Action will lie againſt him on Stat. 23 *Eliz.* for the Juſtice in this Caſe does not act as a Judge of Record. *Leon. Rep.* 323.

If Juſtice purſue not Statute, his Act is void.

If a Juſtice of Peace purſue not the Statute, there his Act is void; but if he purſue it, then neither B. R. nor Seſſions of the Peace can diſcharge it. 2 *Brownl.* 41. *Legat's* Caſe, *Jenkins* 174. *W. Jones* 170.

To call a Juſtice of Peace Buffle-headed Fellow, or to ſay he doth not underſtand Law, are indictable. *Mod. Rep.* 139. *Rex* verſus *Darby.*

Juſtices puniſhed for Miſdemeanors.

And as Juſtices of Peace are favoured by the Law in the Execution of their Office, ſo they are puniſhed for any Miſdemeanors. *Sid.* 192. For a Juſtice of Peace may be indicted for taking Money in the Execution of his Office, or any corrupt Practices by Colour thereof. *Sav. Rep.* 134. *Agard* verſus *Cavendiſh. Keb. Rep.* 1 *Part* 727. Sir *Purbeck Temple's* Caſe.

Authority given to Juſtices of the Peace muſt be exactly purſued, and ſo it ought to appear in their Orders and Determinations. *Fareſ.* 99. 2 *Salk.* 475.

Orders of Juſtices being judicial Acts, are not abſolutely void in themſelves, but voidable, and continue Orders till avoided: Adjudg'd in caſe of Debt on a Bond, with Condition to perform the Order of Juſtices; the Defendant pretending it was a void Order, and that he was not bound to perform it. 2 *Salk.* 674.

Juſtices of Peace have no Juriſdiction upon the Statute of Uſury: And Indictment for Forgery lies not before Juſtices of Peace. 2 *Salk.* 680, 406.

And it is to be obſerved Juſtices of Peace cannot meddle with any thing but ſuch as the Statutes impower them, for they have their whole Power by the Statutes, and no Authority by the Common Law. Vid. 1 *Jones* 170. 1 *Sid.* 292. *Stat.* 1 *Ed.* 3. *c.* 16. 4 *Ed.* 3. *c.* 2. 34 *Ed.* 3. *c.* 1. 36 *Ed.* 3. *c.* 12.

Beſides, inferior Courts cannot take Authority by Statute, unleſs they are particularly named; but ſuperior Courts ſhall, unleſs prohibited or reſtrained by negative Words. *Savil* 134.

Touching the general Authority of Juſtices of Peace. Vid. *Co. Lib.* 8, 127. *Lib.* 9, 118. *Lib.* 11, 65. *Lib.* 12, 32. *Cro. Car.* 112.

And

And ſee the Difference between Commiſſions of Oyer and Terminer, Gaol-Delivery, and of the Peace. 1 *And. Rep.* 111, 112. *Noy* 174, 177.

Juſtices of Peace were created, 1 *Ed.* 3. *c.* 15. *Dalt.* 6. *Lamb.* 20. but firſt named ſo by 36 *Ed.* 3. *c.* 12.

A Felon is brought before a Juſtice of Peace upon Suſpicion, tho' it appear to the Juſtice he is not guilty, yet he may not ſet him at Liberty, but ſo as he may come to his Trial, *Lamb.* 233. *Dalt.* 389. *Cro.* 40. otherwiſe it will prove a voluntary Eſcape in the Juſtice, for he is not to be deliver'd by any Man's Diſcretion. *Quicqu d Juſticiarius fecerit de Recordo ignoranter & pro defectu Scientiæ non erit pro eo punitus.* Crom. 121.

When the ſame Perſons are Juſtices of Gaol-Delivery and Oyer, &c. they may ſit the ſame Day and Place, and enquire by the ſame Jury, but the Entry of the Records muſt be ſeveral as the Indictment is. *Dalt.* 168.

The *Cuſtos Rotulorum* is ever Juſtice of Quorum. *Lamb.* 387. Juſtice may enquire of *Felo de ſe* (hid or caſt into the Sea) where the Coroner cannot have the View. 3 *Inſt.* 55.

He may take an Information out of the County againſt an Offender in the County. 1 *Cro.* 213. So a Recognizance to proſecute by Aſſent of the Parties out of the County. But cannot uſe coercive Power. *ibid.*

One Juſtice may compel a Vintner to draw a Man Wine who demands it, and offers Payment. 24 *H.* 8. *Dalt.* 242.

Juſtices of Peace cannot exerciſe a coercive Power out of the County, nor puniſh Offences (without ſome ſpecial Statute) out of it, or in any City or Corporation in it. *Dalt.* 24. *Crom.* 8, 121. *Lamb.* 47. 1 & 2 *P. & M. c.* 18.

Juſtice of Peace diſcharged cannot certify a Record (in his Hands) without a *Certiorari*, tho' made Juſtice afterwards. *Crom.* 121 & 132.

Juſtices of Peace cannot try a Maim by Inſpection (upon an Indictment) as B. *R.* may do, *Lamb.* 532. So of embezilling and razing a Record, 8 *H.* 6. *Dalt.* 386. So of Murders or Homicides committed in the King's Houſe, or within the Verge. *Dalt.* 73. 33 *H* 8. *c.* 12. So Forgery made Felony by 5 *El. Dalt.* 75. nor try Perſons indicted of Felony before Coroners, or Juſtices of Gaol-Delivery, or Oyer, &c. *Dalt.* 76.

In an Action for falſe Impriſonment, Defendant juſtified, for that the Lord Mayor of *London* is a Juſtice of

of Peace, and that the Defendant is a Serjeant at Mace, according to the Cuſtom of *London*, and that *W. R.* Lord Mayor, commanded him to arreſt the Plaintiff, which he did, &c. Adjudged that a Juſtice of Peace cannot command a Man to arreſt another in his Abſence, without a Warrant, and that the Serjeant at Mace is not an Officer to the Lord Mayor, as he is a Juſtice of the Peace, but the Conſtable. 1 *Brownlow* 204. *Woody's* Caſe.

The Defendants were indicted for not producing the Pariſh Books before Juſtices of Peace, who were appointed by the Seſſions to examine and make Orders thereon, and to commit for diſobeying ſuch Orders; but the Indictment was quaſh'd, for tho' the Seſſions may refer the Examination of the Fact to a certain Number of Juſtices, yet they cannot delegate the Power of making Orders.

Error in Judgment on Indictment for Uſury, found before Juſtices of Peace of *Middleſex*, at their Quarter-Seſſions, for that by the Statute they have no Juriſdiction given them thereof, but they have for Extortion, which is a Crime at Common Law, which Uſury is not, but made ſo by Act of Parliament, and where a Penalty is created by Act of Parliament, the Letter thereof muſt be ſtrictly purſued, and Judgment was reverſed thereon.

Where the Law giveth Authority to two or more Juſtices to act, there one alone cannot execute this Power. *Co.* 5. 94. *Plowd.* 393. *Co. L.* 181.

And yet where a Statute appointeth a Thing to be done by two Juſtices of Peace (or more) if the Offence be any Miſdemeanor, or Matter againſt the Peace, there upon Complaint made (of the Offence) to any one of thoſe Juſtices of Peace, it ſeems that one of thoſe Juſtices may grant his Warrant to attach the Offender, and to bring him before the ſame Juſtice, or any other Juſtice, to find Sureties for his Appearance at the next General Seſſions, there to make anſwer to ſuch his Offence, or elſe he may bind the Offender to his good Behaviour, and ſo to appear at the next Seſſions, if the ſaid Juſtice ſhall ſee any juſt cauſe ſo to do. But one Juſtice alone may not hear and determine the ſame.

Alſo when Things by Statute are appropriated to one certain Juſtice or more, there ſuch Juſtice or Juſtices are to purſue their Authority accordingly. For there is a general Rule put in *Stradling's* Caſe, in *Plowd.* 206. that when a Thing is appointed by any Statute to be done

done by, or before one Person certain, that such Thing cannot be done by or before any other, but that it ought to be done as the Statute hath appointed, and by such express Designation of one, or Power given to one, all others are excluded.

In all Cases where the Justices of Peace have Power to hear and determine, out of their Sessions (*viz.* Upon their own View, or upon the Confession of the Offender, or upon Proof of Witnesses) if upon such Conviction the Offender is to be committed to Gaol, the Justices ought to make a Record in Writing under their Hands of all the Matter, and of the Proofs, *&c.* which Record notwithstanding in many Cases they may keep by them, *&c.*

Also if upon such Conviction the Offender is to be fined to the King, then the Justices of Peace are to estreat such Fine, and to deliver or send the Estreat into the Exchequer, whereby the Barons of the Exchequer may cause the said Fine, or Forfeiture, to be levied to the King's Use.

By many Statutes peculiar Punishments are appointed for several Offences, as Pillory, Stocks, Imprisonment, Binding to the good Behaviour, *&c.* But in all these Cases no room is left for the Justices Discretion, for they ought to give Judgment, and to inflict the Punishment in all the Circumstances thereof, as such Statutes do direct. For if the King cannot alter the Manner of Execution, as to direct a Person to be beheaded, who hath Judgment to be hanged, much less can an Inferior Court alter a Judgment and Sentence directed by Act of Parliament. And therefore the Course taken up in some Counties, to admit the Party indicted for Breach of Penal Laws, to submit, with a Protestation of Not guilty, and therefore forbear to inflict the Penalty imposed, and so mitigate the Penalty, is an Offence for which they are punishable? For thereby, 1. The Sentence impos'd by Act of Parliament is quite altered. 2. The Mischiefs intended to be remedied go unredress'd. 3. Many Times the Poor, who are by Direction of several Acts to have the Penalty, are thereof defrauded.

Indictment was found at the Sessions of the Peace, for forging a Letter in the Name of *J. S.* and upon a Motion in Arrest of Judgment, the Court held, that no Indictment lay before the Justices of Peace for Forgery, but Perjury is indictable upon 5 *El.* before the Justices of Sessions. 2 *Salk.* 406. *Dom. Regina* versus *Yarrington, Mich.* 9. *Annæ B. R.*

A Man was indicted for calling a Justice of the Peace a buffle headed Fellow; Exception was taken, that the Words were not indictable; *sed per Cur.* because it appears they were spoken of him in the Execution of his Office, the Indictment is good; and *per* Chief Justice, all Actions for slandering a Justice in his Office, may be turned into Indictments. *Comberb.* 46. *Pasc.* 3. *Jac.* 2. in *B. R.*

Vide the Orders and Directions touching their Recognizances, Bailment, Commitments, &c. (as printed in *Kelynge*'s Reports).

Justices of Peace cannot by Law hold Cognizance of Pleas upon Penal Statutes, without an express Power given them by those Acts. *Mod. Rep.* 379.

Where a special Authority is given to Justices out of Sessions, it ought to appear in their Orders, that that Authority was exactly pursued; and if they do not observe the Form of Proceeding directed by Statute, it is *Coram non judice*, and void. 2 *Salk.* 475.

The Court was moved for an Information against him, for a Misdemeanor in his Office; but the Court refused to grant it, the Fact with which he was charged being done above a Year: *Cur.* should have mov'd it before; *quod nota.*

A Justice of Peace may take Informations any where to prove Offences in the County where committed, and he principally resides, or take a Recognizance to prosecute. *Cro. Car.* 213.

One cannot prescribe to be a Justice of Peace. *Brownl. Rep.* 206.

A Justice cannot order the Arrest of one that is out of his Presence, by a verbal Order. *Woody*'s Case. 1 *Brownl.* 204.

A Justice was fin'd 200*l.* for giving a Challenge. *Blac.* 43, 44.

A Justice of Peace sent a Servant to the House of Correction, on Complaint of the Master, for that he was saucy, and gave his Horses too much Corn; and this being held not to be a sufficient Cause for the Justice to send the Servant thither, an Information was filed against him by Leave of the Court. *Pas.* 1722. *The King* vers. *Okey.*

If a Justice of Peace bail one not bailable, or refuse to bail where bailable, he may be fined. 3 *Ed.* 1. 15. 23 *H.* 6. 10. So for neglecting to take Order about House of Correction, or for not executing the Statutes of forcible Entry, or for embezilling, wilfully rasing an Indictment, and changing a Trespass into a Felony.

So

So for threatning a Juryman for preſenting any Thing. So for acting as a Juſtice of Peace before he took his Oath, or for refuſing to take Surety of the Peace when tender'd. So for not executing the Statutes againſt Riots, or for embezilling or razing Records.

An Information was brought againſt a Juſtice of Peace for compounding Recognizances, and not returning them to the Seſſions; and for taking twenty Shillings for every unlicenſed Alehouſe, and converting it to his own Uſe; he was fined 1000 Marks, and impriſoned during the King's Pleaſure, was to find Sureties for his Good Behaviour for a Year, and to acknowledge his Offence at the next Aſſizes. *Paſch.* 16 *Car.* 2. *Sider.* 192.

A Juſtice of Peace was puniſhed for conſpiring with another to indict a Stranger at the Seſſions; otherwiſe for a Thing done by him as Judge. *Cro.* 122. Impriſoned for taking Bond in his own Name, and not *Domino Regi*, it concerning the King. 33 *H.* 8. *c.* 9. So for to take Surety for the Peace being tender'd. *Crom.* 3. Embezilling or raſing Records, forfeits his Office, and ſhall be fined. Juſtice of Peace compelled to find Sureties for the Good Behaviour for threatning a Juror; for preſenting a Matter, and not giving Security, committed. *Dalt.* 534.

By Stat. 9 *Geo.* 1. *c.* 7. 'tis enacted, That if a Juſtice for any County at large, ſhall dwell in a City that is a County of itſelf, and within the County at large for which he ſhall be appointed a Juſtice, though not within the ſame County, he may grant Warrants, take Examinations, *&c.* at his own Dwelling-houſe (tho' it be out of the County where he is authorized to act as a Juſtice) and ſuch Acts of the Juſtice and of the Peace-Officers, in Obedience to any ſuch Warrant, ſhall be good in Law, though it happen to be out of his Limits: Provided that nothing in that Act ſhall give Juſtices of the County Power to hold their Quarter-Seſſions in Cities that are Counties of themſelves, nor

Peace-Officers of the County at large to intermeddle in any Matters arising within such Cities or Towns.

Justices having causeless and contentious Suits commenced against them, shall, upon Verdict for them, have double Costs, by 7 *Jac.* 1. *c.* 5. made perpetual by 21 *Jac. c.* 12.

By Stat. 1 *Geo.* 2. *c.* 27. All Persons who were Justices of Peace at the late King's Demise, or have been appointed by any Commission granted by his present Majesty before the 13th of *February*, 1727, and have since the 11th of *June*, 1727, taken the Oath of a Justice before a Person duly authorized, or shall take such Oath before the 28th of *November*, 1728, shall be indemnified for all Acts done by them, as Justices, notwithstanding such Oath of Office was not taken within the Time, as in Strictness of Law was required.

Indictment against a Justice for acting, not having 20 l. per Annum, quash'd, &c.

A Justice of Peace is not qualified, unless he has 20 *l. per Annum*, except Men of the Law; and therefore a Justice of Peace was indicted, for that he sat *contra formam Statuti* 18 *H.* 6. *cap.* 11. and the Indictment was quash'd, because it was not alledged that he had not 20 *l. per Annum* at the Time when he sat as Justice of Peace; for if he had at that Time, then he was not punishable within the Statute. *Roll. Rep.* 2 *Part* 247. *Cro. Jac.* 643. *Pl.* 4.

But now by a Stat. made 5 *Geo.* 2. It is enacted, that from and after the 25th Day of *March*, 1733. no Person shall be capable of being, or of acting as a Justice of the Peace, for any County in *England* or *Wales*, who shall not have an Estate of Freehold or Copyhold, to and for his own Use and Benefit, in Possession for Life, or for some greater Estate, either in Law or Equity; or an Estate for Years determinable upon one or more Life or Lives, or for a certain Term originally created for one and twenty Years, or more, in Lands, Tenements, or Hereditaments lying in *England* or *Wales*, of the clear yearly Value of One hundred Pounds, over and above what will satisfy and discharge all Incumbrances that may affect the same.

No

No Attorney, Solicitor or Proctor in any Court whatſoever, ſhall, after the 25th of *March*, 1733. be capable to continue, or be a Juſtice of the Peace within any County of *England* or *Wales*, during ſuch Time as he ſhall continue in the Buſineſs and Practice of an Attorney, Solicitor or Proctor.

If any Perſon not qualified according to this Act, ſhall, after the 25th of *March*, 1733. accept or take upon himſelf, the Office of a Juſtice of Peace, or ſhall do any Act as ſuch, the Perſon ſo offending ſhall, for every ſuch Offence, forfeit and pay the Sum of One hundred Pounds; one Moiety to the King, his Heirs and Succeſſors, the other to him or them that will ſue for the ſame, by Action of Debt, Bill, Plaint or Information, in any of the Courts at *Weſtminſter*, in which no Eſſoin, *&c.* ſhall be allowed.

This Act ſhall not extend to any City or Town, being a County of it ſelf, or to any other City, Town, Cinque Port, or Liberty, having Juſtices of the Peace within their reſpective Limits and Precincts by Charter, Commiſſion, or otherwiſe.

Nor to incapacitate any Peer, or Lord of Parliament, or the eldeſt Son, or Heir apparent of any Peer or Lord of Parliament, or of any Perſon qualified to ſerve as Knight of a Shire, or to incapacitate or exclude the Officers of the Board of Green-Cloth from being Juſtices of the Peace within the Verge of His Majeſty's Palaces, or to incapacitate or exclude the Commiſſioners and Principal Officers of the Navy, or the two under Secretaries in each of the Offices of Principal Secretary of State, from being Juſtices of the Peace, in and for ſuch maritime Counties and Places where they uſually have been Juſtices of Peace.

Nor ſhall it extend to any of the Heads of Colleges or Halls in either of the two Univerſities of *Oxford* and *Cambridge*, but that they may be made Juſtices of the Peace of, and in the ſeveral Counties of *Oxford*, *Berks* and *Cambridge*, and the Cities and Towns within the ſame, and execute the

Office thereof, as fully and freely in all Reſpects as heretofore they have lawfully uſed to execute the ſame, as if this Act had never been made.

In ſome Caſes the Office of a Juſtice of Peace not Judicial, but only miniſterial.

In ſome Caſes the Office of a Juſtice of Peace is not judicial, but only miniſterial; as upon a *Supplicavit* out of Chancery or *B. R.* for taking Surety for the Peace or Good Behaviour, on a Writ on the Statute of *Northampton*, 2 *Ed.* 3. *cap.* 3. for a Forcible Entry, and on a *Certiorari* out of the Courts of *Weſtminſter* to certify any Recognizance, Indictments, or other Record, either taken before them, or in their Cuſtody; in which Caſes the Juſtices may act no otherwiſe than they are authorized by the ſeveral Writs, which they muſt likewiſe return into the Courts whence they iſſued, with their Doings thereupon.

Dalt. 21. Juſtices ought to keep their Seſſions four Times a Year at leaſt.

The Juſtices of Peace ought to keep their Seſſions (which is a Court of Record held before two or more Juſtices, *Quorum unus*, &c.) not when they pleaſe, but according to Stat. 2 *Hen.* 5. *cap.* 4. four Times in a Year, *viz.*

Time of keeping it.

The firſt Week after
- *Michaelmas.*
- *Epiphany.*
- The Cloſe of *Eaſter.*
- The Tranſlation of *Thomas a Becket* (i. e.) the 7th of *July.*

It ſeems to be the Intent and Meaning of the aforeſaid Statute of 2 *H.* 5. *c.* 4. that the Weeks wherein the aforeſaid Feaſts do fall, muſt be firſt ended before the Seſſions can begin.

Yet by the Statute 14 *Hen.* 6. *cap.* 4. the Juſtices of Peace of *Middleſex* are not obliged to keep Seſſions above twice in the Year; but they may do it oftner if they think fit: And Juſtices of the Counties Palatine of *Cheſter* and *Lancaſter* are to keep Seſſions only twice, *viz.* *Michaelmas* and *Eaſter*, 42 *Hen.* 8. *cap.* 43. tho' at what Place in the County not being aſcertain'd by any Law, therefore

fore 'tis left to the Diſcretion of the Juſtices. Only the Seſſions for *Angleſey* is by 5 *Ed. Dyer* 135. to be kept always at *Beaumaris*; but by 1 *Georgii*, the Juſtices of Peace may now adjourn it from Time to Time to any Part of that County, for the Eaſe of thoſe who take the Oaths to the King, but to no other Purpoſe.

By Stat. 1 *Hen.* 5. *cap.* 4. Juſtices of the Peace may, if they ſee Cauſe, keep more than four Seſſions yearly. *Lam.* 628.

If any Thing be done in private Seſſions, it ought to be return'd to the Quarter-Seſſions. *Style* 360. And the Seſſions is but as one Day. *Palm.* 44.

All the Articles within the Commiſſion of the Peace are both inquirable and determinable at any ſpecial Seſſions of the Peace; and alſo all ſuch Statutes as uſe the Word Seſſions indifferently, without adding General or Special. *Lamb.* 535, 536. tho' a private Seſſions of the Peace is not ſaid to be held for the County. *Style* 359.

All Articles within Commiſſion, are inquirable at any Special Seſſions.

Where treble Damages are given by Act of Parliament, the Juſtices are not to aſſeſs the Damages, and then treble them; but the Jury ought to find the Damages, and then the Juſtices are to treble them. *Cro. Car. p.* 438. in *Brumſted's* Caſe. *Jones's Rep.* 379. *The King* verſus *Lamfern.*

The Power and Authority of a Juſtice of Peace by Commiſſion are determinable either by the Demiſe of the King. *Lam.* 71. *Dyer* 165. *a.* but this is altered by Stat. 1 *Annæ. c.* 8. whereby 'tis enacted, that all Commiſſions of the Peace ſhall not be determined, but ſhall continue in Force for Six Months next enſuing the Demiſe of any King or Queen, unleſs ſooner ſuperſeded by the next immediate Succeſſor; or they are determinable at the King's Pleaſure, and that ſignified either by a Diſcharge under the Great Seal, or by a *Superſedeas*; which laſt doth but ſuſpend their Authority, and may be revived by *Procedendo:* Or 2*dly*, By Implication, as by granting Commiſſions to others, leaving out the old ones, whoſe Power ceaſes either by Notice, reading the new Commiſſion at the Aſſizes, or holding Seſſion by Virtue of it; in which two laſt Caſes, the old Juſtices muſt take Notice of the new Commiſſion; but nothing already done by them ſhall be deemed void; or Proceſs, *&c.* then depending, be diſcontinued. The Acts of the old Juſtices are lawful till the Seſſions, when the new Commiſſioners are publiſhed. *Mo.* 187. Or 3*dly*, By Acceſſion of another Office, as of Sheriff in the ſame County, during which

How the Juſtices Power is determined.

Dalt. 11.

Time it is ſuſpended as it ſeems; but if made a Coroner, 'tis the Opinion of ſome that his Power is extinct. *Lamb.* 72. *Quære.*

Dalt. 12. But an Acceſſion of any Honour or Dignities takes not away their Power.

Dalt. 12. Mayors and Conſtables, &c. Office not determin'd by Death of the King. The Authority of all Officers choſe by the People, by Virtue of the King's Writ, or otherwiſe, are not determined by the Demiſe of the King, as Coroner, Conſtable, &c. As alſo of all Mayors, &c. who have the Authority of Juſtices of Peace by Charter.

And becauſe in ſome Caſes Mayors, &c. by Act of Parliament, may act as Juſtices of Peace, I ſhall next Treat of the Powers given to Mayors, &c. by Acts of Parliament.

Ale-houſes. MAYORS, &c. may convict unlicenſed Ale-houſe-keepers, and levy the Penalties. 3 *Car.* 1. *c.* 3.

Chief Officers of Towns are to cauſe Quart and Pint Pots for the ſelling of Ale, to be mark'd after Examination, as to their being full Meaſure, or ſhall forfeit 5*l.* 11 & 12 *W.* 3.

And by the Statute 23 *Hen.* 8. Mayors, &c. have Power to Aſſeſs the Prices of Ale and Beer.

Armour. Mayor, &c. may execute the Statute againſt riding armed. 2 *Ed.* 3. *c.* 3.

Artificers. Mayor, &c. may inquire of Offences of Artificers and Victuallers. 2 *Ed.* 6. 15 *S.* 3.

Bread. Mayors, &c. have Power to regulate the Aſſize of Bread, and examine into the Goodneſs of it; and if Bakers make unlawful Bread, they may give it to the Poor, and pillory the Offenders. 52 *Hen.* 3. *c.* 6. 8 *Ann.* 28.

Common Prayer. Mayor, &c. may enquire of Offences againſt the Common Prayer. 1 *Eliz.* 2. *S.* 22.

Cuſtoms. The next Magiſtrate may commit till the next Seſſions ſuch as ſhall abuſe a Cuſtom-Officer. 14 *Car.* 2. *c.* 11. *S.* 6.

Chief Magiſtrate of the Port, &c. may, on Complaint, grant a Warrant to ſearch for uncuſtomed Goods. 12 *Car.* 2. *c.* 19. And the Conſtable may

break open a House to seize the Goods in the Day-time, if Resistance be offered. 12 *Car.* 2. *c.* 14.

By Stat. 4. *Jac.* 1. *c.* 5. A Head Officer has Power on View, Confession, or Proof, by one Witness, to convict any Person of Drunkenness, and Fine him 5 *s.* or commit him to the Stocks for six Hours, and for the second Offence, to bind him to the good Behaviour. Drunkenness.

Persons sitting tipling in an Ale-House, Inn, or Tavern, are likewise punishable by Mayors: Such Offenders shall forfeit 3 *s.* 4 *d.* for the Use of the Poor, or be set in the Stocks for four Hours. And the Alehouse-keeper, &c. permitting Tipling, is liable to a Penalty of 10 *s.*

Mayors, and other Chief Officers, are to inquire into unlawful Games, against Stat. 33 *H.* 8. *c.* 9. &c. Games and Gaming.

Mayors, &c. are likewise empowered to search Places suspected to be unlawful Gaming Houses; and Offenders of this Nature to forfeit 40 *s.* and they may commit such as they find Playing at unlawful Games.

Mayors, &c. may hear and determine Matters touching Leather, and Examine, &c. 1 *Jac.* 1. 22. *S.* 50. Leather.

Mayors, &c. may punish Offenders against 43 *Eliz. c.* 7. for robbing Orchards, breaking Hedges, &c. Orchards robbed, Hedge-breaking, &c.

Mayors, &c. may tax for Relief of Persons visited with the Plague, and may appoint Searchers, Watchmen, Keepers, and Buriers of the Dead, &c. 1 *Jac.* 1. *c.* 31. Plague.

Mayors, &c. may hear and determine Matters concerning Servants and Apprentices. 5 *Eliz. c.* 4. Servants.

Mayors, &c. may arrest Soldiers departing without License. 18 *H.* 6. *c.* 19. Soldiers.

Mayors, &c. may put in Execution the Statute of 3 *Car.* 1. *c.* 1. concerning the Lord's Day. Sunday.

Mayors, &c. may punish Offenders for Profane Swearing or Cursing. 21 *Jac.* 1. *c.* 20. 3 *Car.* 1. *c.* 4. but Stat. 6 & 7 *W.* 3. confines the Forfeiture of 1 *s.* to Servants, Labourers, &c. Other Persons must pay 2 *s.* and double, treble, &c. on repeating the Offence. Profane Swearing and Cursing.

Mayors, &c. may cause Vagrants, or other loose, idle, and disorderly Persons, Blind, Lame, &c. or pretending to be so, found begging in the Streets, to be whipp'd; on offending a second Time. 12 *Ann. c.* 23. Vagrants.

Mayors, &c. may assess the Prices of Beer-Vessels, 8 *Eliz. c.* 9. Vessels.

Veſſels. Mayors, &c. may appoint Searchers and Gaugers of all Veſſels for Salmon, Herring, and Eels. 11 *H.* 7. *c.* 23. 22 *Edw.* 4. *c.* 2.

Weights. Mayors, &c. may puniſh Offenders touching falſe Weights, &c. 11 *H.* 6. *c.* 8. 7 *H.* 7. *c.* 4.

Wood, Billets, and Faggots, &c. Mayors, &c. may inſpect and aſſeſs the Aſſize of Tale-Wood, Billet and Faggot, 43 *Eliz.* *c.* 14.

How Juſtices of the Peace may defend themſelves againſt Suits.

How Juſtices of Peace may defend themſelves againſt Suits brought againſt them for any thing done Virtute Officii.

IF any Action, Bill, Plaint, or Suit upon the Caſe, Treſpaſs, Battery, or Falſe Impriſonment, ſhall be brought any where againſt a Juſtice of Peace, &c. for any Thing done *Virtute Officii*, it ſhall be lawful for them, or any other who act in their Aid, Aſſiſtance, or Commandment, to plead the General Iſſue, and to give the Special Matter in Evidence. If the Verdict paſs for the Defendant, or the Plaintiff be Nonſuit, or diſcontinue, the Defendant ſhall have his double Coſts. 7 *Jac.* 1. *c.* 5.

Which Statute was to continue but for ſeven Years, but is ſince made perpetual by 21 *Jac.* 1. *c.* 12. And it is thereby enacted, That all Actions upon the Stat. ſhall be laid in the proper County where the Fact was done. And if upon the Trial the Plaintiff ſhall not prove the Fact done in that County where the Action is laid, the Jury ſhall find the Defendant Not guilty; and in Caſe of ſuch Verdict, Nonſuit or Diſcontinuance, the Defendant ſhall have his double Coſts.

Conſtable may make a Deputy who may take Benefit of 7 Ja. 1. c. 5. and 13 Jac. 1.

A Conſtable may make a Deputy, who may plead the General Iſſue, and thereby take the Benefit of 7 *Jac.* 1. *c.* 5. as was reſolved *M.* 13 *Jac.* 1. *B. R. Philips* verſus *Winchcomb.* *Moore's Rep.* 145. *Bulſt. p.* 3. *p.* 77.

Hitherto of Generals: The following Heads relate to ſuch particular Laws and Matters, as concern the Cognizance and Juriſdiction of the Juſtices of the Peace, under Alphabetical Diviſions.

IN

Acceſſary.

IN High Treaſon there are no Acceſſaries; for the Adviſers, Counſellors, Perſwaders and Aſſiſtants; as alſo the Receivers, knowing thereof, are all Principals.

In High Treaſon no Acceſſaries. Dalt. 394. Stamf. 40. Bro. Treaſon 19.

Note, That the Act which makes a Man Acceſſary in Felony, the ſame makes him a Principal in High Treaſon.

Stamf. 40.

In the higheſt and loweſt Offences there are no Acceſſaries, but all are Principals, as in High Treaſon; ſo in the loweſt, as Riots, Routs, Forcible Entries, and other Treſpaſſes *Vi & Armis*.

In Petty Treaſon there may be Principals and Acceſſaries, as there are in Felonies.

In petty Treaſon there are Acceſſaries. Dalt. 395.

There are two Sorts of Acceſſaries in Felony, the one before the Felony committed, the other after.

Ibidem.

If a Procurer, Mover, or Conſenter, *&c.* be preſent at the Time of the Felony committed, tho' he do nothing, he is Principal.

Acceſſaries before and Acceſſaries after. Plowd. 100.

If one, being preſent at the Killing or Robbing of a Man, doth nothing, yet would have aſſiſted his Companion, if there had been need, he is a Principal.

Br. Coron. 188, 228. & Indictment 5. Fitz. 309. Stamf. 40.

If one be preſent where Felony is committed, and doth not come in Company with the Felons, or be of their Confederacy, tho' he conceals it, 'tis no Felony in him, but only a Miſpriſion and finable.

Fitz. Coron. 325. Stamf. 37, 40. Crompr. 44.

Two Thieves *A.* and *B.* ſet upon *C.* and *D.* to rob them; *C.* flieth one Way, and *A.* purſueth him, but robbeth him not; *D.* flieth another Way, and *B.* purſueth him and robbeth him: Adjudged by the whole Court of *K. B.* that *A.* is Principal in the Robbery of *D.* and was hang'd for it. *Hill. 26 Eliz.*

4 H. 7. 31. Dalt. 396.

N. B. That to be Acceſſary in Fact in Felony, whether before or after, is alſo Felony, and they ſhall have the ſame Puniſhment which the Principal ſhall have.

Acceſſary the ſame Puniſhment as Principal. Dalt. Ibid.

If any Offence be made Felony by Statute, it may have Acceſſaries both before and after the Fact committed, tho' the Acceſſaries be not mentioned in the Statute.

Lamb. 279, 280. Fitz. Cor. 228 Co. 3. Inſt. 72. ſed Quær. Hale's P. C 223. Dalt. 396.

If *A.* command *B.* to lay hold upon *C.* and *B.* goes and robs *C.* this is no Felony in *A.* (if he be abſent at the Time of the Robbery done) for this Command might

might have been done without any Robbery; but if the Command had been to beat *C.* and *B.* kills him, *A.* is Acceſſary.

Dalt. Ibidem. Plowd. 475.

If a Command be given to rob *J. S.* and the Party commanded attempting to rob him kill him, he that commanded the Robbery is Acceſſary to the Murder.

Acquittal of one Acceſſary diſcharges all the reſt *Raym.* 477.

Ibidem.

If *A.* counſel *B.* to kill *C.* by Poiſon, and he kills him with his Sword, &c. or to kill *C.* by the Highway, and he kills him in his Houſe; or to kill him one Day, and he kills him another: In all theſe Caſes *A.* ſhall be Acceſſary to the Murder.

He who commands or counſels an unlawful Act, anſwerable for the Conſequence.

Plowd. 175.

He that commandeth or counſelleth any unlawful Act to be done, ſhall be adjudged Acceſſary to all that ſhall enſue upon the ſame evil Act; but not to any other diſtinct Thing. *A.* commandeth *B.* to ſteal a Horſe, and he ſteals an Ox, or to rob a Man on the Highway of his Money, and he robs him in his Houſe of his Plate; or to burn the Houſe of *B.* and he burneth the Houſe of *C.* theſe are other Acts and Felonies than *A.* commanded to be done; and therefore *A.* ſhall not be adjudged Acceſſary to them.

A. counſels B. to poiſon one, and he poiſons another, A. is not Acceſſary. Ibidem.

A. counſelleth *B.* to poiſon *C.* and to that End *A.* buyeth Poiſon, and delivereth it to *B.* who tempereth it in an Apple, and delivereth to *C.* with Intent to poiſon him, and *C.* knowing nothing, giveth the Apple to *E.* who eateth it and dieth thereof: Here *A.* is not Acceſſary to the Murder of *E.* yet it is Murder in *B.*

A. commands B. to kill C. and afterwards countermands it. Ibidem. Dyer 186.

If *A.* counſels and commands *B.* to kill *J. S.* and afterwards countermands it, yet *B.* kills *J. S.* in this Caſe *A.* ſhall not be adjudged Acceſſary.

If *J. S.* counſelleth a Woman to murder the Child in her Body (when it ſhall be born) and after, when born, the Midwife, or other Perſon in Preſence of the Mother, and by her command killeth the Child, *J. S.* is Acceſſary, tho' done in his Abſence.

In Manſlaughter no Acceſſaries before the Fact. Moor's rep. 461, 666. Co. 4. 44.

N. B. That in Manſlaughter, there can be no Acceſſary before the Fact; for Manſlaughter is always upon a ſudden Affray: Acceſſaries in Petty Treaſon, Wilful Murder or Robbery, or to the felonious Burning of a Dwelling-houſe, or Barn with Corn, or Horſe-ſtealing, ſhall not have the Benefit of Clergy. 4 & 5 *Ph.* & *M. c.* 4. *Dyer* 183, 186. 11 *Co.* 35. 2 *Ed.* 6. *c.* 33. 31 *Eliz.* 12.

Where

Where the Principal is acquitted of Murder and found guilty of Manſlaughter, the Acceſſaries after the Fact ſhall anſwer as Acceſſaries to Manſlaughter. *Moor's Rep.* 461. *Gorſad's* Caſe.

If the Principal be attainted of Murder, and then dies, and the Juſtices before whom the Acceſſary is tried have the Record of the Attainder before them, they may proceed againſt the Acceſſary, elſe not. *Mich.* 7. *H.* 4. *f.* 27.

Acceſſaries after the Offence are they, who knowing that another hath committed a Felony, do feloniouſly or voluntarily receive, harbour, or relieve him, *&c.* whether it be before Attainder or after. *Bro. Indict.* 4. Acceſſary after the Fact.

To lend a Felon an Horſe to go his Way, or otherwiſe to make his Eſcape, makes the Lender an Acceſſary. *Fitz. Coron.* 427. But to relieve a Felon in Priſon, or to aid him by good Words, or ſue for his Deliverance, or ſend a Letter for his Enlargement; This maketh not a Man Acceſſary to the Felony. *Bro. Coron.* 103. no more doth it to relieve, *&c.* a Perſon going under Bail, and bound to appear for his Trial. *Lamb.* 286. Br. Coron. 103. Lamb. 286.

A Feme Covert can't be Acceſſary to her own Huſband, but to another ſhe may. *Fitz. Coron.* 383. *Stamf.* 26 & 43, but not *e converſo.*

A Servant may be Acceſſary either to his Maſter or Miſtreſs, both before and after the Fact. *Stamf.* 27.

If a Man be the Cauſe of the Eſcape of a Felon, tho' he be his own Brother, he thereby becomes Acceſſary. *Stamf.* 42. But if one, whom I know to be a Felon, eſcape out of my Houſe without any Furtherance, I am no Acceſſary. Bro. Eſc. 42.

He that reſcues a Perſon arreſted for Felony, is a principal Felon. *H. P. C.* 116. Reſcuer of a Felon a Principal Felon.

If upon Hue and Cry, any Perſon arreſt the Thief, and take the Goods from him, letting him go, he is an Acceſſary. 27 Aſſiz. 62.

In Caſe of an Acceſſary after the Fact, it is requiſite that it be Felony at the Time he becomes Acceſſary to it. For if *A.* wound *B.* mortally, and *C.* knowing thereof, receive, *&c. A.* and then let him go before *B.* dies, he is no Acceſſary. *Stamf.* 287. Stamf. 287.

At Common Law no Man could be Acceſſary, *&c.* to a Felony in another County: But this is alter'd by Stat. 2 *Ed.* 6. *cap.* 24.

A Man may be Acceſſary to an Acceſſary, if he receive him, *&c.* knowing thereof. *Br. Coron.* 104. Br. Cor. 104.

The

The Principal ought firſt to be attainted, becauſe if he be acquitted, he can have no Acceſſary. *Hales P. C.* 221.

33 Eliz. Br. 57. If a Man upon Malice incite a Madman to kill another, though ſuch Perſon can have no Malice: Yet the Inciter ſhall be Principal, and ſhall not go unpuniſhed.

Dalt. 401. 9 Co. 68. b. and 119. P. P. C. 221. Ray. 477. If the Principal be attainted erroneouſly, the Acceſſary notwithſtanding, ſhall be put to anſwer.

If the Principal die, be found Not guilty, or that he ſlew the other in his own Defence, the Acceſſary ſhall be diſcharged.

Br. Cor. 15. Where it is found that the Principal killed another *Se defendendo*, or Miſ-adventure, the Acceſſary ſhall be diſcharged.

Moore 666. There are no Acceſſaries in Forgery, which is made Felony, but all are Principals. *Moor* 666.

Booth's Caſe. Cr. Car. 567. If the Principal be burned in the Hand, the Acceſſary muſt be diſcharged; for the Acceſſary ought not to be condemned, but where the Principal is attainted.

Godb. 186. A Man may be Acceſſary to the ſtealing of his own Goods, as if Confederate with another to ſteal Goods from his Bailiff, to the Intent to charge his Bailiff: This is Felony.

Style 86. Three indicted on the Statute of Stabbing, and found Guilty, and he that did it executed, the other two adjudged Acceſſaries.

Twenty going, &c. Keil. 161. If twenty Men go in Aid of the Sheriff, or any other lawful Act, if one of them kill another, the reſt are not Acceſſaries; otherwiſe if the Twenty go about an unlawful Act.

7 Co. 9. Adulterer counſels the Woman to murder the Infant when born, he is Acceſſary. 7 *Co.* 9.

12 Co. 21. 99. They that receive the Miſ-doers upon the Statute of 3 *H.* 7. *c.* 12. of ſtealing Women, are Principals, and by that Act, the Acceſſary before and after are Principals.

If Principal be convict, &c. 1 Ann. c. 9. If Principal be convict of Felony, ſtand Mute or Challenge peremptorily above twenty Jurors, the Acceſſary may be proceeded againſt, as if ſuch principal Felon had been attainted, notwithſtanding ſuch Principal be admitted to his Clergy, pardoned, or otherwiſe delivered before Attainder: And ſuch Acceſſary, if he be convict, if he ſtands Mute, or challenges as aforeſaid, ſhall ſuffer as if Principal had been attainted. 1 *Ann. c.* 9.

Buyers and Receivers of ſtoln Goods knowingly, may be preſented for a Miſdemeanor before the Principal be convict; which ſhall exempt them from being puniſhed as Acceſſary, when the Principal is convicted. Buyers and Receivers of ſtoln Goods, &c.

The Principal muſt always be named in the Indictment againſt an Acceſſary, and ought to be firſt convicted, otherwiſe the Acceſſary cannot be tried; for by the Acquittal of the one, the other is diſcharged. *Vide Stat.* 1 *Ann. Seſſ.* 2. *c.* 9.

If the Owner hath complained to a Juſtice of Peace, or to a Conſtable; or if the Felon be taken upon Hue and Cry, or otherwiſe, and then the Owner takes his Goods, or compounds with the Felon, or Conſents to his Eſcape, this makes him an Acceſſary after the Fact, becauſe he did once act againſt the Offender *Criminaliter*. But if in Purſuit he re-taketh his Goods, and ſuffereth the Felon to eſcape before any Complaint made to the Juſtice, or without being charged, &c. this is a Miſdemeanor; for which he may be fined; but it doth not make him an Acceſſary; becauſe *in initio* he has Liberty *agere civiliter vel criminaliter*. Owner Acceſſary, &c.

If the Principal doth not appear, the Acceſſary cannot be tried; if he is not attainted, the Acceſſary ſhall not be outlawed: If a Man is indicted as Acceſſary to two Principals, one of which happens to be convicted, and the other doth not appear; yet the Acceſſary ſhall be tried, and may be condemned, if found Acceſſary to the Party convicted, and may again be arraigned as Acceſſary to the other when he appeareth. If Principal do not appear, &c. Ibidem.

If both Principal and Acceſſary plead to the ſame Felony, they may be tried by the ſame Jury; but Judgment muſt firſt be had againſt the Principal, and the Jury muſt be charged to acquit the Acceſſary, if they find the Principal Not guilty. Principal and Acceſſary, &c.

The Acceſſary ſhall not take Advantage of any Error in the Attainder of the Principal. 9 *Rep.* 68. *Raym.* 477. Acceſſary, &c.

N. B. The Principal in Murder is not bailable, but the Acceſſaries are, *i. e.* the Juſtices of Peace cannot bail; but the Judges of *Oyer* and *Terminer* may. *Plowd.* 55. *Wingfield's* Caſe.

In an Indictment againſt an Acceſſary, you muſt ſet forth the Manner of the Felony, and that the Defendant knowing him to have done ſuch a Felony, *Felonice recepit*, &c. Indictments, &c.

If

Criminal indicted, &c.

If a Criminal is indicted as Principal and acquitted, he cannot afterwards be indicted as Accessary before that Fact, because he who advises the Thing to be done, is in a Manner guilty of the Fact it self; and being acquitted of that, he is discharged of all Guilt before the principal Fact committed.

Indicted as Accessary, &c.

But notwithstanding such Acquittal, he may be indicted as Accessary after the Fact, because such an Accessary cannot be guilty of committing the Fact it self, for that was done before he knew any Thing of it.

When divers meet to do an unlawful Act, and one alone doth it, and the others present abet it, and are ready to assist him in doing it, they are all Principals. *Pasch.* 2 *H.* 8. *Keilway f.* 161. *Plowd.* 1 *Mar.* 98. *a.* But it is otherwise if a Man comes there by Chance, and not with an Intent to join in doing an unlawful Act. *Trin.* 14 *H.* 7. *f.* 31. 1 *Plowd.* 7.

Buyers, &c.

If any Person shall receive, or buy knowingly any stoln Goods, or knowingly harbour or conceal Felons, he shall be taken as Accessary to the Felony; and being convict, shall suffer Death as a Felon. Stat. 5 *Ann. cap.* 31.

Where a Woman is taken away, &c.

Where a Woman is taken away against her Will, within the Meaning of the Statute 3 *H.* 7. *c.* 2. tho' the Receivers of the Woman are Principals; yet the Receivers of those who took the Woman are but Accessaries, *Trin.* 10 *Jac. Co.* 12. *Pl.* 100. *Co.* 3 *Inst. p.* 61. And those Accessaries shall have Benefit of Clergy, because it is after the Fact; for that Statute of 33 *Eliz. c.* 9. takes away the Benefit of Clergy from Principals, Aiders and Abettors before the Fact only. *Vide* the Statute.

None can be Accessary in petty Larceny.

Cholmley, Recorder of *Lincoln*, was turn'd out for trying the Accessary first. 1 *Vent.* 146.

Affray.

What it is.

THIS is a Fighting between two or more, and differs from an Assault; for the one is a common Wrong, the other is an Injury done to a particular Person.

Stroke given, &c.

There must be a Stroke given or offered, or a Weapon drawn, or otherwise it is not an Affray. 3 *Inst.* 158.

'Tis to be consider'd upon this Head. } What may be done. } 1. By the Conſtable. 2. By a Juſtice of Peace. 3. By a private Perſon.

1. *By the Conſtable.*

He may command the Affrayers to depart, and upon Refuſal, may commit them: If they reſiſt he may call others to his Aſſiſtance, and may juſtify the wounding, in ſuch Caſe: And if either he or his Aſſiſtants are killed, 'tis Murder. If 'tis a great and dangerous Affray, he may commit them 'till they find Sureties for the Peace. — He may commit the Affrayers.

If any Perſon is wounded, he may commit the Offender, if he will, he may carry him before a Juſtice, who may commit him, if he will not give Security to appear at the next Seſſions. — Carry him, &c.

He may take them out of a Franchiſe in the ſame County: He may purſue them into another County; but then when taken, he muſt carry them before a Juſtice of Peace, for he cannot commit out of the County. — May take them out of a Franchiſe, &c.

If he is aſſaulted doing his Duty, or if the Affray be in his Preſence, he may put them in the Stocks, 'till he can get Aſſiſtance to carry to Gaol; or he may ſecure them according to the Quality of the Offenders, 'till he can bring them before a Juſtice, or to Priſon, but not in his own Houſe. *Dalt.* 37. *Lamb.* 133. — May put them in the Stocks, &c.

If there is Threatning to kill, or beat, or hurt, tho' this is no Affray, yet he may apprehend the Perſons and carry them before a Juſtice: But where an Affray is over, he cannot apprehend any one without a Warrant from a Juſtice, unleſs ſome Perſon is dangerouſly wounded. — When Affray, &c.

If he neglect his Duty in not endeavouring to ſuppreſs an Affray, &c. 'tis preſentable at Seſſions, and he ought to be fined. *H. P. C.* 135. 3 *Inſt.* 158. — If he neglect, &c.

If a Conſtable is hurt in an Affray, he may have an Action of Treſpaſs, and have good Damages; but the Affrayers ſhall have no Remedy. — Conſtable hurt, &c. Lamb. 141.

2. *By the Juſtice.*

If the Affray be in his Preſence, he may commit 'till they find Sureties.

If

If any Perſon is dangerouſly hurt, he may within a Year and a Day after the Hurting commit, or bind him over, 'till it appear what will become of the Party hurt; and 'tis not Diſcretion to Bail the Offender, tho' he may do it by Law.

He may *ex Officio* require thoſe who ſtrike or threaten in his Preſence to find Sureties for their Good Behaviour.

If an Aſſault be made upon a Juſtice or Conſtable, they may defend themſelves and apprehend the Offenders, and make them find Sureties for the Peace; the Juſtice may apprehend them, and ſend them to another Juſtice to be ſent to Gaol: The Conſtable may commit to the Stocks, and after carry to the Juſtice.

3. *By a private Perſon.*

Any Man may ſtay the Affrayers, who are about to aſſemble to break the Peace, 'till the Heat is over, and deliver them to a Conſtable.

Likewiſe any Man may apprehend an Offender, who hath dangerouſly wounded another; and carry him before a Juſtice, or to Gaol. *H. P. C.* 135. *Dalt.* 35. or may deliver them to a Conſtable.

If two be Fighting, and there be more looking on, who do not uſe their Endeavours to part them, if one be killed, the Lookers on may be indicted and fined. *Noy's Rep.* 50.

Challenge to fight by Word or Meſſage is an Affray. *Sid.* 186.

An Indictment for an Affray.

JURR', &c. quod A. B. de, &c. & C. D. de, &c. vi & armis (viz.) cum gladiis & aliis bellicoſis inſtrumentis (tali die, &c.) apud, &c. in Com' pred' arraiat' & illicite congregat' Inſultum & Affraiam invicem fecerunt in terrorem & perturbationem diverſorum ſubditorum dicti Dom' Regis tunc ibid' exiſten' & in malum & pernicioſum exemplum ligeorum dicti Regis & contra pacem dicti Domini Regis, Coron' & dignitat' ſuas.

Ala-

Alamodes and Luſtrings.

ALamodes and Luſtrings ſhall not be brought into any Port but *London*, without Licence from the Commiſſioners of the Cuſtoms for importing the ſame. Commiſſioners to ſeal Alamodes, &c. imported, and keep an Entry thereof; Alamodes, or, &c. brought into any other Port, forfeited: Perſons bringing Alamodes, or, &c. contrary to this Act, and an Act made 8 & 9 *W.* 3. ſhall forfeit 500 *l.* Officers of his Majeſty's Ships, importing Alamodes, or, &c. beſides the Penalties in the Act aforeſaid, ſhall be incapable of ſerving his Majeſty, &c. Mariners making Diſcovery, &c. ſhall be diſcharged the King's Service, if deſired, and have the Benefits given by this Act beſides; Perſons altering or counterfeiting Cuſtom houſe Seal, forfeit 500 *l.* and ſtand in the Pillory two Hours. Perſon buying or ſelling Alamodes, or, &c. ſealed with counterfeit Seals, or having in his Cuſtody knowingly, and not diſcovering, forfeits Goods and 100 *l.* Any Perſon by Warrant from one Juſtice, may go with Conſtables into any Shop, or, &c. and ſearch for Alamodes, or, &c. and ſeize the ſame ſo fraudulently imported, ſealed and mark'd as aforeſaid. In Caſe of Diſpute, &c. Proof muſt lie on Importer, for ſecond Offence double the Sum. Two Thirds of the Forfeitures to the King, remaining Part to Seiſor or Proſecutor. King to bear the Charge of Proſecution out of his Share. Proſecution to be within two Years.

8 & 9 and 9 & 10 W. 3. c. 43.

8 & 9 and 9 & 10 W. 3. c. 43.

See Luſtrings.

Alehouſes.

THE Uſe of Alehouſes and Inns was for the Relief and Lodging of Travellers, and to ſupply the Wants of thoſe who are not able to provide great Quantities of Drink and Proviſion; and if any Alehouſe-keeper or Inn-keeper refuſe to lodge a Traveller, the Juſtice of Peace may compel him to it, or the Conſtable may preſent it as an Offence next Seſſions, in order to ſuppreſs it, or the Party may have an Action on the Caſe; but they cannot be compelled to

The true Uſe of Alehouſes, Inns, &c.

He may be indicted, Dalt. 30.

ſell Victuals, unleſs the Traveller tender Money, if required.

Before 5 Ed. 6. lawful, &c. Ibidem.

Before the Stat. 5 *E.* 6. it was lawful for any to keep an Alehouſe without a Licence; for it was a Means of Livelihood, and not prohibited by any Law; but if kept in a diſorderly Manner, it was indictable as a Nuſance. *M.* 13 *W.*

As Alehouſes encreaſed and were uſed to diſorderly Purpoſes, ſo ſeveral ſubſequent Laws were made to ſuppreſs both the Numbers and Diſorders.

Theſe Laws generally concern,
1. Licenſing.
2. Diſorders.
3. Officers.

1. *Licenſing.*

The firſt was made *Ann.* 11 *H.* 7. by which Power is given to two Juſtices to reject the ſelling Ale.

By 5 & 6 Ed. 6. no Man to keep an Alehouſe, &c.

There was no further Proviſion made in this Matter 'till about fifty-ſix Years after, and then *An.* 5 & 6 *Ed.* 6. a Law was made, that no Man ſhould keep an Alehouſe without being licenced either in Seſſions, or by two Juſtices (*Quorum unus.*)

The Puniſhment was Commitment for three Days without Bail, not to be enlarged 'till the Offender entred into a Recognizance with two Sureties not to keep an Alehouſe; which Recognizance being certify'd to the next Seſſions, was to be a ſufficient Conviction to fine him 20 *s.*

This Stat. gave Power to Seſſions, &c.

This Stat. gave Power to the Seſſions, or the two Juſtices to put down Alehouſes at Diſcretion, and to take Recognizances of Alehouſe-keepers not to uſe unlawful Games, or keep Diſorders in their Houſes.

The Conviction upon this Statute ought to be by way of Preſentment or Indictment at the Seſſions, and the two Juſtices ought not to commit 'till Conviction.

Palm. 388. 2 Rol. Rep. 398.

Yet there are ſome Books which tell us that an Indictment will not lie for keeping an Alehouſe without a Licenſe, becauſe this Statute directs in what Manner the Offender ſhall be puniſhed, *viz.* by committing him. 4 *Mod. p.* 144. *Trin. Term.* 4 *W. & M. B. R. Rex & Regina* verſus *Marriot*, *Show.* Rep. *p.* 398. *Hill.* 8 *Will.*

A further Puniſhment inflicted by 3 Car. 1.

But becauſe many Alehouſekeepers in thoſe Days were not able to pay that Forfeiture, and it was ſeldom levied by Reaſon of Poverty, which made People unwilling to preſent the Offenders, therefore a farther

farther Puniſhment was added by 3 *Car.* 1. which not only inflicts the Forfeiture of 20 *s.* to the Uſe of the Poor, to be levied by the Conſtable or Church-Warden by Warrant of a Juſtice, before whom the Offence was proved, and which Diſtreſs may be ſold three Days after; but it provides, that if no Diſtreſs can be taken, the Juſtice ſhall deliver the Offender to the Conſtable to be whipped.

This Statute appoints the Conviction to be by Confeſſion, View of the Juſtice, or Oath of two Witneſſes.

For the ſecond Offence, committed to the Houſe of Correction for a Month.

For the third, not to be enlarged but by Order of Seſſions, provided ſuch Offender ſhall not be puniſhed twice for the ſame Offence, *viz.* not both. By Stat. 5 & 6 E. 6. & 3. c. 1.

That the Juſtice muſt not make a Warrant for leſs than 20 *s.*

That Feme Covert keeping an Alehouſe without Licenſe, her Husband may be puniſhed. Husband of a Feme Coverr, &c. may be puniſh'd.

And by a late Statute Perſons are prohibited to ſell Brandy, or other diſtilled Liquors by Retail, to be drank in their Houſes without a Licenſe, in the ſame Manner as common Alehouſe-keepers are licenſed; and the Offender is made ſubject to the ſame Rules, Penalties, and Forfeitures, as thoſe are who ſell Drink without a Licenſe. Sellers of diſtilled Liquors muſt have a Licenſe like Alehouſes. 12 & 13 W. 3.

By an Act made *Anno* 2. *Geo.* 2. 'tis enacted, That no Licenſe ſhall be granted to keep a common Inn or Alehouſe, or to retail Strong Waters but at a General Meeting of the Juſtices acting in the Diviſion where the Party dwells, to be holden for that Purpoſe on the 29th of *September*, yearly, or within 20 Days after, or at any other General Meeting for the Diviſion: And all Licenſes which ſhall be granted to the Contrary hereof ſhall be void.

But nothing in this Act ſhall alter the Method or Power of granting Licenſes in any City or Town corporate.

2. *Diſorders.*

By the Statute 1 *Jac.* 1. Alehouſe-keepers, *&c.* are prohibited to ſuffer Townſmen to ſit tippling, upon Forfeiture of 10 *s.* to the Poor where the Offence was committed. 1 *Jac.* 1. *c.* 9. Alehouſe-keepers not to ſuffer Townſmen to ſit tippling on Forfeiture of 10 *s.*

Conſtable or Churchwarden may levy it by Diſtreſs, which may be ſold after ſix Days; and if that cannot be had, the Offender is to be committed till paid.

Of being diſabled to keep an Alehouſe for 3 Years. Townſmen tippling forfeit 3 s. and 4 d. or to be ſet in the Stocks 4 Hours.

A farther Puniſhment was added by 21 *Jac.* c. 7. that the Offender ſhould be diſabled to keep an Alehouſe for three Years afterwards.

By 4 *Jac.* 1. 55. Townſmen ſitting tipling, forfeit 3 *s.* 4 *d.* for the Uſe of the Poor, and being not able to pay it, ſhall be put in the Stocks four Hours, the Puniſhment muſt be within ſix Months.

Vintner keeping an Inn, and Inn-keeper are within this Statute *per* 1 *Car.* 14.

The Acts laſt mentioned relate only to Townſmen ſitting tipling.

Any Perſon whatever not to ſit tippling.

But by 21 *Jac.* 1. *c.* 7. Any Perſon, be his Habitation where it will, is prohibited to ſit tipling; the Conviction by the former Laws was to be by two Witneſſes, but by this Statute one Witneſs, or Confeſſion of the Party, is ſufficient to prove the Breach of 1 *Jac.* 9. and 4 *Jac.* 5. and the Oath of the Party confeſſing, ſhall be ſufficient to convict any other offending at that Time; and a farther Puniſhment is added, *viz.* That the Offender ſhall be diſabled to keep an Alehouſe within three Years next after.

It ſet up again by two other Juſtices in 3 Years, two firſt Juſtices may again ſuppreſs it.

Upon this laſt Statute it hath been held, that if an Alehouſe be ſuppreſſed, and ſhall afterwards within three Years be licenſed by two other Juſtices out of Seſſions, the firſt Juſtices who ſuppreſs'd it, may do ſo again, and commit the Party for diſobeying their Order. *Hut.* 99. 8 *Co.* 32.

Difference between ſuppreſſing an Alehouſe licenſed, and one that is not.

But there is ſome Difference in the Manner of ſuppreſſing an Alehouſe which is licenſed, and one which is not; for in the firſt Caſe the Proceedings muſt be upon the Recognizance, the Condition whereof muſt be broken, or it may be by Indictment, and then the Diſorders muſt be proved, and ſuch as make a Nuſance. 1 *Salk.* 45.

An Order of Suppreſſion for keeping an Alehouſe, the County of *Flint* was in the Margin, but not in the Body of the Order, and quaſh'd; ſo adjudg'd in the Caſe of the Pariſh of *Downton*: *Cur.* it is good in a Civil Action, but not in an Order.

Where an Alehouſe is kept without Licenſe, the Juſtices may ſuppreſs it at Diſcretion, which may be done by Commitment of the Owner, and the want of Licenſe ſhall only come in queſtion, and not any Reaſon why it was denied, 1 *Salk.* 45, 46. and no Appeal lies for denying a Licenſe. *M.* 13. *W.* 3.

Sufferer of Tipling may be bound in Recognizance or committed. Ibidem.

The Statute 1 *Jac.* *c.* 9. againſt ſuffering Tipling in their Houſes, enacts, That the Offender may be bound in a Recognizance to keep good Order, or may

be committed as Alehouſe-keepers without Licenſe, or indicted at Seſſions.

An Inn-keeper not qualified cannot be ſuppreſſed, but by Indictment for a common Nuſance at Seſſions, and the Judgment muſt be to diſable him to keep that very Inn; but it may be continued and kept as an Inn by another Perſon of good Repute. *Hutt.* 100.

Inn-keeper not qualified can't be ſuppreſſed but by Indictment. Ibidem.

Alehouſes ought to be in ſome publick Street of the Town, and not in By-Streets, or remote from the Town; for if built in any ſuch Places, or the Inn-keeper be a lewd Perſon, or of ill Fame, it may be preſented or indicted as a common Nuſance, and be ſuppreſſed.

Where Alehouſes are to be, Jacob's Juſt. 14.

If any Perſon ſell Ale to an unlicenſed Alehouſe-keeper more than for the Uſe of his own Family, he forfeits 6 *s.* 8 *d. per* Barrel, to be divided between Poor and Proſecutor, the Proſecution muſt be at Quarter-Seſſions. 4 *Jac.* 1. *c.* 4.

If any ſell Ale to unlicenſed Alehouſe-keeper, forfeits 6 s. and 8 d. per Barrel.

By Statute 16 *Jac.* 1. the Juſtices are to meet once in a Year, either in *April* or *May*, and call before any two of them (*Quorum unus*) ſuch Perſons who ſell Ale in their Diviſions, and inform themſelves who are fit to keep Alehouſes, and then proceed to licenſe them.

Juſtices to meet once a Year to grant Licenſes, and thereon to take Recognizances, which are to be Ingroſs'd in Parchment, and Copies delivered to Alehouſe-keepers, and then ſent to the Clerk of the Peace, who are to tranſmit a Brief thereof yearly.

And on granting the Licenſes, they are to take a Recognizance, with Sureties for keeping good Orders, &c.

Theſe Recognizances, and the Conditions of them are to be ingroſſed in Parchment by the Clerks attending, and examined Copies to be delivered to the Alehouſe-keepers.

Then the Recognizances are to be ſent to the Clerk of the Peace, in order to be entred at the next Quarter-Seſſions, to entitle the King to the Forfeitures.

Perſons not licenſed at the Meeting of the Juſtices, may be licenſed afterwards; but none to be licenſed who hath not a convenient Lodging for a Traveller.

By Statute 11 & 12 *W.* 3. Ale is to be ſold by the full Ale Quart or Pint, according to the Standard in the Exchequer, and in a Veſſel ſtamp'd or mark'd, either from the Meaſure in the Exchequer, or in ſome City or Market-Town where an Ale Quart ſhall be made from the ſaid Standard, and kept for that Purpoſe, under the Penalty of forfeiting not exceeding 40 *s.* nor under 10 *s.* for every Offence.

Ale to be ſold in Standard Meaſure. 11 & 12 W. 3.

Jac. 1. c. 9.

Alehouſe-keepers, Inn-keepers, and Victuallers are prohibited ſelling leſs than one Quart for a Penny, under Penalty of 20*s.* by 1 *Jac. c.* 9. & 21 *Jac.* 1. *c.* 7. but this ſuſpended during the Continuance of the additional Exciſe, *per* 1 *W. & M. c.* 24.

Collector, &c. to provide Meaſures in all Market Towns.

The Collectors of Exciſe are to provide a full Ale Quart and Pint for every Market-Town within their reſpective Diviſions, or they forfeit 5 *l.*

Chief Officer to mark the Meaſures.

The chief Officer of ſuch Town ſhall cauſe the Pots to be marked, taking one Farthing for each Veſſel; if he neglects, or refuſes ſo to do, he forfeits 5 *l.* and treble Damages ſhall be recovered by the Party grieved, and full Coſts.

A Moiety of theſe Forfeitures go to the Poor of the Pariſh where the Offence is committed, the other to the Proſecutor.

Conviction, one Witneſs, and Proſecution in 30 days.

The Conviction is to be by Oath of one Witneſs, before one or more Juſtices, and the Proſecution muſt be in thirty Days after the Offence, and the Penalty is to be levied by a Warrant from the Juſtice by Diſtreſs, &c.

If Alehouſe-keepers ſell in Veſſels unmarked, or refuſe to give an Account how many, &c. can't detain Goods, &c.

If an Innkeeper, or Alehouſe-keeper, ſells in a Veſſel not Stamp'd, or refuſes, in bringing in the Reckoning, to give an Account of the particular Number of Quarts or Pints, he ſhall not detain any Goods, if the Gueſt refuſes to pay the Reckoning, but ſhall be left to his Action at Law.

Action on this Act muſt be laid in proper County.

If an Action be brought for putting this Act in Execution, it muſt be laid in its proper County where the Fact was done, and not elſewhere; and if the Plaintiff is Caſt, he muſt pay treble Coſts.

The Juſtices muſt give this Act in Charge at every Seſſions; but it ſhall not extend to Colleges or Halls in the Univerſities.

3. *Neglect of Officers.*

Officers neglecting to levy Penalties on 1 Jac. 1. c. 9. forfeit 40 s.

Officers neglecting to levy the Penalties upon 1 *Jac.* 1. *c.* 9. or if no Diſtreſs can be taken, and they do not certify the ſame within twenty Days, they forfeit 40*s.* to the Uſe of the Poor, to be levied by Diſtreſs, by Warrant of one Juſtice; and if that can't be had, then to be committed till paid.

Conviction by one Witneſs.

The Conviction muſt be by one Witneſs upon Oath before one Juſtice.

Receiver of the Penalties ſhall be accountable to ſucceeding Officers.

By 3 *Car.* 1. *c.* 30. Officers neglecting to execute a Warrant of the Juſtice for the 20*s.* for ſelling Ale without Licenſe, or refuſing to whip the Offender, if no Diſtreſs can be taken, forfeit 40*s.* to the Poor, or to be committed without Bail.

Officers neglecting to execute a Warrant on 3 Car. 1. c. 30. forfeit 40 s.

A Drunkard may be puniſhed in Eccleſiaſtical Court, or by a Juſtice of Peace. *Godb.* 514. 4 *Jac.* 1. *c.* 7.

Drunkard puniſhable in Eccleſiaſtical Court, or by a Juſtice, Godb. 514. 4 Jac. 1. c. 7.

Husband muſt be joyned with the Wife in an Indictment for the Wife's keeping a diſorderly Houſe, becauſe he muſt pay the Fine. *Hil.* 20 & 21 *Car.* 2.

Husband joined with Wife in an Indictment, &c.

There is no Licenſe requiſite for any that ſell Beer or Ale in any Place where Fairs are kept, or where Forces are kept, to ſell to them. 5 & 6 *Ed.* 6. *c.* 25. 3 *Car.* 1. *c.* 3.

No Licenſe neceſſary to ſell Ale in Fairs.

An Innholder letting his Beer to his Tapſter for 14*s. per* Barrel, he himſelf paying but 8*s.* is indictable. 9 *Jac.* 1. *Seſſ. P. Middleſex.*

The keeping of an Alehouſe, Tavern, &c. by any Serjeant, Bailiff, or other Officer, is miſchievous, and to be ſuppreſſed, and this is uſually practiſed in *B. R.* Vid. *Stat.* 22 & 23 *Car.* 2. *c.* 20. againſt carrying Perſons arreſted into Alehouſes or Taverns, to their Charge.

Alehouſes kept by Bailiffs, &c. to be ſuppreſs'd. Bond's Juſtice, 42. Dalt. c. 7.

No Perſon keeping an Inn, Tavern, Alehouſe or Victualling-houſe, ſhall publickly uſe, or expoſe to be uſed, any manufactured Plate whatſoever (except Spoons) under the Penalty of Forfeiting the ſame, or the Value thereof, with full Coſts of Suit to him that ſhall ſue for the ſame in any Court of Record at *Weſtminſter.* 7 & 8 *W.* 3. *c.* 10.

7 & 8 W. 3. no Alehouſe-keeper to uſe any Plate but Spoons.

A Perſon was Indicted for keeping of an Alehouſe and ſelling Ale without Licenſe; but the Indictment not concluding *contra formam Statuti*, it was quaſh'd, and for that at Common Law it was no Offence. *Sand. Reports*, 1 *Part*, 249. *Faulkner's* Caſe. Becauſe ſelling Ale without a Licenſe was no Offence at Common Law, but made an Offence by Stat. 5 & 6 *Ed.* 6. & 3 *Car.* 1. *c.* 3.

Selling Ale without Licenſe no Offence at common Law. Sand's Rep. 1 Part. 249 Falkner's Caſe.

But Term *Paſc.* 21 *Car.* 2. a Man was Indicted for ſelling Ale in unſealed Pots, or unlawful Meaſure, without concluding *contra formam Statuti*, and the Court declared, upon a Motion, to quaſh the Indictment, that juſt Meaſures were by the Common Law, and the Statutes only aſcertained them. *Sid.* 409. *Pl.* 1. *Paſ.* 21. *Car.* 2. *The King* againſt *Burgoine. Ventr. Rep.* 13. *S. C.*

But a Crime to ſell in cheating Meaſure at common Law.

Indictment for ſelling Ale on Sunday quaſh'd.

A Motion was made to quaſh an Indictment for ſelling Ale on *Sunday*, in Time of Divine Service, becauſe by the Statute of *Car.* 2. a ſummary Way before two Juſtices was directed, and quaſh'd accordingly. *Hil.* 5. *Ann. Regin.* verſus *Holmes.*

Travellers have peculiar Privileges, and therefore Inns chargeable in many Caſes. 8 Rep. Caley's Caſe.

Inns were allow'd for the Benefit of Travellers, who have certain Privileges while they are in their Journies, and are in a more peculiar manner protected by the Law; 'tis for this Reaſon that the Inn-keeper ſhall anſwer for thoſe Things which are ſtoln *infra hoſpitium*, tho' not delivered to him to keep, and tho' he was not acquainted that the Gueſt brought the Goods to the Inn; for it ſhall be intended to be thro' his Negligence, or occaſioned by the Fault of him or his Servants.

So if he puts a Horſe to Paſture without the Direction of his Gueſt, and the Horſe is ſtoln, he muſt make Satisfaction.

But if a Neighbour, who is not a Traveller, lodges in an Inn, and loſeth his Goods, or if the Gueſt is robbed by his own Servant in the Inn, or by any one who came thither with him, or by leaving his Goods in one Room, when the Inn-keeper deſired him to leave them in another, in ſuch Caſes he ſhall not be anſwerable.

But the Seſſions cannot ſuppreſs an Alehouſe licenſed by two Juſtices unleſs 'tis for Diſorder, for by the Stat. 5 & 6 *Ed.* 6. they have no ſuch Authority.

By Stat. 12 *G.* 1. *c.* 12. a Duty is granted of not leſs than 20 *s.* nor more than 6 *l.* to be paid yearly by every Victualler and Retailer of Beer and Ale in *London* and *Weſtminſter*, and within the weekly Bills of Mortality, leviable by Commiſſioners, who are to grant Permiſſions or Authorities for retailing Beer or Ale, the not taking out whereof incurs a Forfeiture of 20 *l.* doth not take away or diminiſh the Powers by Law veſted in Juſtices of the Peace within *London* and *Weſtminſter*, in licenſing and regulating Innkeepers, Victuallers, and Retailers of Beer and Ale.

Commiſſioners ſhall have the ſame Power as Commiſſioners of Exciſe.

Any Perſon ſued for putting this Act in Execution, may plead the general Iſſue, and give the Statute and the ſpecial Matter in Evidence; and if the Plaintiff be Nonſuit, or the Defendant obtain Judgment on a Demurrer or a Verdict, he ſhall have treble Coſts.

A Licenſe to keep an Alehouſe.

Staff. ſſ. *WE whoſe Names are hereunto ſubſcribed, being two of his Majeſty's Juſtices of Peace for the ſaid County, do according to the Form of the Statute in that Caſe made and provided, admit and allow* T. P. *of* &c. *Victualler, to keep a common Alehouſe in that Houſe where he now dwelleth, known by the Sign of for and during the Space of one whole Year next enſuing the Date hereof, ſo as the ſaid* T. P. *do not uſe any unlawful Games, during the ſaid Time, within the aforeſaid Houſe, and ſo as he keep good Order and Rule therein, ſo long as it ſhall continue a common Alehouſe, as aforeſaid. Given under our Hands and Seals,* &c.

5 & 6 Ed. 6. c 25. Two Juſtices, quorum unus.

A Recognizance upon keeping an Ale-Houſe.

Glouc. ſſ. MEmorand̃ quod ſecundo die Maii, Anno Regni Domini Georgii Dei Grã Magnæ, Britanniæ, Franciæ & Hiberniæ Regis, fidei Defenſor, &c. primo, Annoq; Dom̃ 1715. apud, &c. in Com̃ pred̃ A. B. de, &c. C. D. de, &c. & E. F. de, &c. venerunt coram nobis W. B. & H. J. Armigr̃ Juſticiariis dict̃ Dom̃ Regis ad pacem in Com̃ pred̃ conſervand̃ Aſſigñ & recognoverunt ſe debere dicto Domino Regi modo & forma ſequeñ viz. predict' A. B. in viginti libris & predict' C. D. & E. F. utriq; in decem libris legalis monete Magnæ Britanniæ de ſeparalibus bon̄is & catallis, terris, & tenementis ſuis reſpective levand̃ ad opus & uſum dict̃ Dom̃ Regis hered̃ & ſucceſſorum ſuorum ſi defalt̃ fieret in performatioñ conditionis infra ſcript.

THE Condition of this Recognizance is ſuch, That whereas the above bound *A. B.* is allowed by the Juſtices above named, to keep a common Alehouſe in the Houſe, wherein he now dwelleth, known by the Sign of, *&c.* for the Term of one Year from the Date hereof: If therefore the ſaid *A. B.* ſhall not, during the Continuance of the ſaid Licenſe, permit or ſuffer any unlawful Games to be uſed in his Houſe, or any Diſorders to be committed therein, but ſhall, during the ſaid Term, keep and maintain

tain good Order and Government in the ſame, then this Recognizance to be void, or elſe to remain in full Force.

Capt. & Recogn' die & Anno prius ſupradict' cor' nobis

W. B.
H. J.

A Licenſe to ſell Brandy.

Bedf. ſſ. WE *his Majeſty's Juſtices of the Peace for the ſaid County of* Bedford, *whoſe Names are hereunto ſubſcrib'd* (quorum unus) *do allow and licenſe* John Banks *of* Ampthil, *in the ſaid County Shopkeeper, to ſell Brandy or other diſtill'd Liquors by Retail, to be drank in the ſame Houſe wherein the ſaid* John Banks *now dwells, and not elſewhere, for the Space of one whole Year next enſuing the Date hereof, or until the next general licenſing of Sellers of Brandy, or other diſtill'd Liquors for the ſaid County, ſo as no unlawful Games, Drunkenneſs, or any other Diſorder be ſuffered in the Houſe, Yard, Garden, or Backſide of the ſaid* John Banks, *but that good Order and Rule be maintain'd therein, according to the Laws of this Realm made and provided in that behalf: For the due Obſervance whereof, the ſaid* John Banks *hath now entred into Recognizance with Sureties, according to the Statute given under our Hands and Seals, this 4th Day of* September 1731, *and in the Fifth Year of the Reign of our Sovereign Lord* George *the Second, by the Grace of God, of* Great Britain, France, *and* Ireland *King, Defender of the Faith,* &c.

A Warrant againſt a Perſon for keeping an Alehouſe without Licenſe.

To the Conſtable of, &c.

Two Juſtices, Quorum unus.

Staff. ſſ. WHereas *We, whoſe Names are hereunto ſubſcribed, two of his Majeſty's Juſtices of the Peace for the County aforeſaid, have been credibly inform'd, That* T. P. *of,* &c. *doth keep a common Alehouſe without Licenſe, contrary to the Law in that Caſe made and provided: Theſe are therefore to will and require you to bring the ſaid* T. P. *before Us, or one of Us, or ſome other of*

of his Majeſty's Juſtices of the Peace for this County, to be dealt withal according to Law: And hereof fail not. Given under our Hands and Seals.

A Warrant againſt an Alehouſe-keeper without Licenſe, upon the Statute of 3 Car. 1. cap. 3.

Staff. ſſ. *WHereas* T. P. *of*, &c. *Victualler, was this preſent Day lawfully convicted before me, for keeping of a common Alehouſe in the Pariſh of*, &c. *not being thereunto lawfully licenſed according to the Form of the Statute in that Caſe made and provided, by reaſon whereof he hath forfeited to the Poor of the ſaid Pariſh the Sum of* 20 *s. of lawful Money; theſe are therefore to require you, or one of you, to levy the ſaid Forfeiture, by diſtraining the Goods and Chattels of the ſaid* T. P. *and that you detain the ſame for the Uſe aforeſaid; and in Default of Payment of the ſaid Sum of* 20 *s. within three Days after ſuch Diſtreſs taken, that then you appraiſe and ſell the ſame to ſatisfy the ſaid Forfeiture; and if the ſaid* T. P. *ſhall not have ſufficient Goods, upon which the ſaid* 20 *s. may be levied as aforeſaid, or ſhall not pay the ſame within ſix Days after the Date hereof, that then you the ſaid Conſtable do openly whip, or cauſe the ſaid* T. P. *to be whipped in the Pariſh of*, &c. *for the ſaid Offence: And hereof fail not*, &c.

3 Car. 1. The firſt Conviction either upon View, Confeſſion, or Oath of two Witneſſes before one Juſtice.

Where he is taken, or where offence done.

Second and Third Conviction.

WHereas, &c. (ut ſupra, *to the Word provided*) *And whereas the ſaid* T. C. *hath been once before lawfully convicted of the like Offence, ſo that this is the ſecond Time of his Offending: Theſe are therefore to require and command you to apprehend the ſaid* T. C. *and ſafely convey him to the Houſe of Correction, and deliver him to the Keeper thereof with this Warrant: Hereby commanding you the ſaid Keeper to receive the ſaid* T. C. *into your Cuſtody and Houſe, and to keep him there for the Space of one Month, and that you deal with him as an idle and diſorderly Perſon.*

In the third Conviction ſay, *to keep the ſaid* T. C. *in your Cuſtody until he ſhall be delivered from thence by the Order of the Juſtices in their general Quarter-Seſſions; and that during that Time you deal with him*, &c.

A Warrant againſt an Alehouſe-keeper for ſuffering Tippling in his Houſe.

1 Jac. cap. 9. 21 Jac. c. 7. One Juſtice, View, Confeſſion, or Oath of two Witneſſes, and Proſecution within ſix Months, but by 21 Jac. c. 7. one Witneſs is ſufficient. 1 Car. c. 4. Vintners are within this Act, and the Alehouſe-keeper is diſabled for 3 Years.

Staff. ſſ. WHereas it hath been duly proved before me this preſent Day, That T. P. of, &c. Victualler, did upon the 27th Day of Auguſt laſt paſt, permit and ſuffer J. S. and J. K. both of, &c. to remain and continue drinking and tippling in the Alehouſe of the ſaid T. P. in the Pariſh aforeſaid, contrary to the Form of the Statutes in that caſe made and provided: Theſe are therefore to require you the ſaid Conſtable or Churchwardens, to levy by Diſtreſs of the Goods and Chattels of the ſaid T. P. the Sum of Ten Shillings for the ſaid Offence, for the Poor of the ſaid Pariſh, and to detain the ſaid Goods for the Space of ſix Days next after ſuch Diſtreſs taken, if the ſaid Forfeiture of Ten Shillings ſhall not be paid to you within that Time; and that afterwards you appraiſe and ſell the ſaid Goods, to ſatisfie the ſaid Forfeiture, rendring the Surpluſage to the Owner. And hereof fail not, &c.

Vide more of Alehouſes in reſpect to Exciſe, under Title Brewers.

An Indictment for keeping of a diſorderly Houſe.

Suſſex, ſſ. JUr', &c. quod T. P. de, &c. Victualler, eſt homo male converſationis & Gubernationis & pacis Dom̃ Reg̃ perturbator, & quod idem T. P. apud H. in Com̃ p̃æd̃ 22 die Auguſti, Anno, &c. cuſtodiebat, renebat & occupabat quandam popinam communem (Anglice a common Tippling Houſe) & p̃æd̃ 22 die Auguſti Anno, &c. nec non diverſis diebus & noctibus tam antea quam poſtea apud H. p̃æd̃ in Com̃ p̃æd̃ in eadem popina diverſos homines male converſationis & ſuſpect ibidem bibentes juranres & ludentes ad illicitos ludos, viz. pictis, chartis & aleis (Anglice Cards and Dice) omnibus horis tam noctis quam diei recepit & hoſpitat eſt per quod Vicini ſui & alii ligei populi dicti Dom̃ Reg' ibidem multiplicirer vexantur inquietantur & gravantur in malum exemplum aliorum dict Dom̃ Regis ſubditorum & contra formam Statut' in hujuſmodi caſu edit & p̃ovis & contra pacem dict Dom̃ Regis nunc coron̄ & Dignitat ſuas, &c.

A War-

A Warrant to ſuppreſs an Alehouſe.

Staff. ſſ. WHereas we are credibly informed upon the Complaint of ſeveral Perſons, That T. P. of, &c. doth ſuffer rude and diſorderly Perſons to frequent his Houſe in the Pariſh of, &c. being at this Time a common Alehouſe, wherein they uſually commit many great Diſorders to the Diſturbance of thoſe who live near the ſaid Place; for which Reaſon we R. B. and W. N. two of his Majeſty's Juſtices of the Peace for the ſaid County, one whereof is of the Quorum, do think it convenient to diſcharge and put away the common Selling of Ale and Beer, or other Liquors in the ſaid Houſe: Theſe are therefore to require you forthwith to go to the ſaid T. P. and to charge him from henceforth not to ſell or ſuffer to be ſold any Beer or Ale or other Liquors in the ſaid Houſe, and that you alſo cauſe the Sign of the ſaid Houſe to be pulled down; And hereof fail not, &c.

5 & 6 Ed. 6. cap. 25. Two Juſtices, Quorum unus, may diſcharge and remove where they think fit the common Selling of Ale. If he continue to ſell afterwards 'tis a Contempt, and upon Proof, any Juſtice may bind him to his good Behaviour, and to appear at Seſſions; and if he cannot find Sureties, then to commit him.

A Certificate for continuing an Alehouſe-keeper.

To the Right Worſhipful his Majeſty's Juſtices of the Peace for the County of, &c.

WE whoſe Names are hereunto ſubſcribed, Inhabitants of the Pariſh of H. within the Diviſion and County aforeſaid, do humbly certify, That the now Dwelling Houſe of A. B. Victualler, is conveniently ſituated there for a Victualling Houſe, and that he is of good Name and Fame, and the ſame Houſe is well accommodated for Entertainment of Travellers, and that he keepeth good Rule therein, and therefore we humbly deſire your Worſhips that his Licenſe for keeping the ſaid Victualling Houſe there may be continued.

G. D.
E. F.

A Warrant for renewing Licenſes of Alehouſes.

THeſe are in his Majeſty's Name to command you to ſummon all the Licenſed Alehouſe-keepers, Victuallers, and others within your Hundred, as commonly uſe Selling of Ale, Beer, &c. perſonally to appear before Us at, &c.

&c. *upon*, &c. *at Ten of the Clock in the Forenoon of the ſame Day; and to bring with them their former Licenſes and Certificates of their civil Demeanors, and Fitneſs for that Purpoſe; to be new licenſed, the ſame Certificate to be ſigned by two ſubſtantial, honeſt and diſcreet Inhabitants of the reſpective Pariſhes where they dwell; and that you have the Names of the Perſons you ſhall have ſo warned, and alſo the Names of the ſeveral Pariſhes and Places where their Houſes are ſituated, and by what Signs the ſame are known; to the End that ſuch of them may be continued, and ſuch of them ſuppreſſed as ſhall be thought fit. Given under our Hands*, &c.

Annuitant and Annuity, &c.

Certificate that Annuitant was alive when Payment became due. 2 Ann. c. 3.

MInister and Church-Wardens to give a Certificate under their Hands, that the Nominee of the Annuitant was alive on the Day the Payment became due, or before one Juſtice upon Oath. 2 *Ann. c.* 3.

Appeals.

THO' Appeals do not ſtrictly belong to the Office of a Juſtice of Peace, yet in regard they have relation to ſome Felonies, it may not be improper to ſay ſomething concerning them.

Appeals by Writ or Bill, &c.

Appeals may be brought either by Writ or Bill. Where the Appeal is brought by Writ, there muſt be fifteen Days between the *Teſte* and Return; the Reaſon is, becauſe the Defendant may have Time to appear at *Weſtminſter*, from any Part of *England*, by computing twenty Miles to a Day's Journey, for 'tis neceſſary he ſhould appear in Perſon, becauſe the Appellant muſt count *in propria perſona*, and not by Attorney; and if he is not preſent, he may be demanded and nonſuited, but ſuch Nonſuit is not peremptory, becauſe 'tis before Appearance. P. 4 *Ann.*

Appeals are of 3 Sorts.

Appeals are of three Sorts, 1. By the Heir Male for the Death of his Anceſtor. 2. By the Wife for the Death of her Husband. 3. By the Appellants for wrong done to themſelves, as Robbery, &c.

Theſe Appeals are now not ſo common as Indictments, becauſe the Proſecution is not only more chargeable, but 'tis the moſt nice Suit in the Law, for the Omiſſion of any

any Word which is Material will abate the Writ. 1 *And.* 41.

So by miſtaking the Place. *Cro. El.* 196.

So where an Appeal is brought againſt one as Acceſſary to a Murder, where no Principal was named in it. *Dyer* 133. Where 'tis brought by a Brother and Heir, it ſhall abate if he is ſo named after the *alias dictus*, and not in the Subſtance of the Writ. *Dyer* 50. *b.*

Capias muſt be the Day of the Return of the Writ.

The Proceſs of *Capias* muſt be awarded the ſame Day of the Return of the Writ of Appeal, and it will be a Diſcontinuance if dated but a Day afterwards, and aided by no Statute, nor by the Appearance of the Party himſelf. 2 *Cro.* 283. *Yelv.* 204. 1 *Bulſtrode* 141.

This varies from all other Proceedings, for a Fault in it can never be amended; and tho' regularly after a Nonſuit you may bring the like Action again, yet a Nonſuit in any Appeal for Felony (but it muſt be after Appearance in proper Perſon, *Sid.* 52.) is peremptory, becauſe 'tis in *favorem vitæ*. Yet the Party may be afterwards indicted. 1 *Inſt.* 139. *Cro. El.* 460.

Nonſuit in Appeal peremptory.

And the Stat. 5 G. 1. *c.* 13. by which Writs of Error were made amendable, does not extend to any Appeal of Felony or Murder, nor to any Proceſs upon an Indictment or Information, *&c.*

5 G. 1. does not extend to Appeals.

If there be a nearer Heir to the Perſon killed, the next Heir Male cannot bring an Appeal in Murder; as if he that was killed had only a Daughter, his Brother ſhall not have an Appeal.

What the Count in Appeals contain.

The count in an Appeal muſt contain the Fact, as to which four Things are neceſſary, 1. In what Part of the Body. 2. Of what Length and Depth. 3. That he died of the Wound. 4. Within the Year and a Day.

The Year, the Day not neceſſary in an Indictment.

The Hour it may be *circa horam ante Meridiem.*

Circiter pectus not good in an Appeal.

The Year of the King. That the Fact may appear to be done within the Year.

The Vill where it was done: And with what Weapon.

The Fact muſt be laid to be done in a Vill, and not in a Pariſh, becauſe 'tis expreſly requir'd by the Stat. of *Glouceſter*, that the Fact ſhall be alledg'd to be done in a Vill. 11 *Ann.*

An Appeal againſt an Acceſſary ought to be brought in the County where the procuring and inciting was, and not where the Principal was attainted. *Dyer* 38. *a.*

And as the Place, ſo likewiſe the Time when to be brought is material; and as to that there is ſome Difference,

ference, for if 'tis an Appeal for Murder, it muſt be brought within a Year and a Day after the Fact; if for Robbery, it may be twenty Years after.

Indicted of Murder, and convicted of Manſlaughter.

Where one is indicted of Murder, and convicted of Manſlaughter, and an Appeal brought, the Court may proceed upon ſuch Conviction, pending the Appeal; and the Appellee may be bailed before he has his Clergy: And the Court may proceed to Judgment upon the Conviction of Manſlaughter, tho' there be an Appeal depending. And this was reſolv'd in the Caſe of *Armſtrong* and *Liſle*.

Appeal formerly preferr'd to an Indictment.

In former Times there cou'd be no Proceeding on an Indictment for Murder till the Year and a Day was expired, in which Time the Party might bring an Appeal; and 'tis agreed, that if an Offender was indicted, at the ſame Time, and before the ſame Judge, an Appeal was freſhly proſecuted, the Appeal ought to be preferred; becauſe if it was for a Robbery the Appellant might have Reſtitution, which he cou'd not have upon an Indictment before the Statute 21 *H.* 8. And if it was for a Murder, no Pardon cou'd prevent the Puniſhment. But by Stat. 3 *H.* 7. *c.* 1. An Indictment may be tried without ſtaying for the Appeal.

If one indicted of Murder is found guilty of Manſlaughter, and afterwards being demanded by the Court why Judgment ſhould not paſs againſt him, he prayed his Clergy, which is allowed, and that he reads as a Clerk, and was burnt, *&c.* This is a good Plea to bar the Appeal. *Armſtrong* and *Liſle*.

Plea in Appeal.

If a Stroke be in one County, and Death in another, the Appeal may be brought in the County where the Man died, by the Stat. 2 & 3 *Ed.* 6. tho' not at Common Law. But a Fact in one County cou'd not be tried in another, and therefore an Appeal of Murder committed in *Montgomery* was tried by a Jury in *Shropſhire*; and for this Cauſe it was held ill. 2 *Inſt.* 68. *Jones* 255.

Stat. 26 H. 8.

'Tis true, the Stat. 26 *H.* 8. *c.* 6. allows that a Man may be indicted in one County for a Fact committed in another; but it doth not mention Appeals.

Woman can appeal for no Murder but of her Husband.

At Common Law a Woman might have an Appeal for the Death of her Anceſtor, but by *Magna Charta* 'tis enacted, That a Woman ſhall not have any Appeal of Murder but for the Death of her Husband; and therefore *ne unques accouple*, *&c.* is a good Plea in Bar to an Appeal. 1 *Inſt.* 15. Yet if the Perſon ſlain had no Heir of his Father's Side, his Uncle of the Mother's Side might have an Appeal; and in ſuch Caſe he muſt of Neceſſity make his Conveyance by a Woman.

She

She must continue to be *fœmina viri sui*, for if she marry before, or pending the Appeal, 'tis gone; if after Judgment in an Appeal, she cannot have Execution. 3 *Inst.* 241. If she marries Appeal is gone.

She might have an Appeal of Robbery, for that is a Wrong done to herself.

At the Common Law this Appeal was the only Way for the Party robbed to have Restitution of the Goods taken from him, for he could not have them restored upon an Attainder, or an Indictment, because that was at the Suit of the King. And this was the Occasion of making the Statute of 21 *H.* 8. to remedy that Defect, and to give the Justices a Power to award Restitution of the Goods taken away, the Robber being found guilty. *Staund.* 167. 2 *Inst.* 320. At Common Law no Restitution on Indictment.

Principals and Accessaries must be joined in an Appeal; and yet if the Principal be pardoned before Judgment, or hath his Clergy, the Accessary cannot be tried, because before Judgment given it doth not judicially appear that there was any Principal, and where there is no Principal there cannot be an Accessary; but if the Principal be pardoned after Attainder, 'tis otherwise. Principals and Accessaries must be join'd in Appeal.

A Release of all Actions real and Personal will not discharge an Appeal of Felony, because 'tis an Action of a higher Nature; 'tis a Criminal Action, and must be released by the Word Appeal, or by other general Words, *viz.* All Actions Criminal or Mortal, *&c.* A Release of Actions real and personal will not discharge Appeal.

But a Release of all Personal Actions is a good Bar to an Appeal of Mayhem, because Damages are only to be recovered therein.

Upon Not guilty pleaded in an Appeal of Mayhem, the Appellee cannot give in Evidence that he did it in his own Defence, but he ought to plead it specially by way of Justification. Pleas in Appeal.

'Tis a good Bar to plead a Recovery in Trespass, *&c.* and to aver, That the wounding in the Appeal of Mayhem, and the Mayhem in the Trespass were all one. 4 *Rep.* 43.

But this Appeal is seldom brought; the usual Way is, an Action of Trespass for an Assault, Battery, and Maiming, *&c.* and in this Action the Court may increase the Damages upon the View of the Mayhem, and Affidavits of the Expences; but then the Word *Mayhemavit* must be in the Declaration, or the particular Manner of the Mayhem must be expressed, which is the better Way of declaring, for otherwise the Court cannot increase the Damages, unless the

Judge before whom it was tried will certify the Particulars, but he must be a Judge of the same Court. *Sid.* 108. *Hard.* 408.

Misnomer is a good Plea in an Appeal. *Dyer* 348. *Leon.* 268. *Cro. El.* 223, 224.

Guilty of Manslaughter a Bar on Indictment.

In an Appeal of Murder the Jury may find the Defendant guilty of Manslaughter, or not, as they shall see Cause; but if they find him guilty of Manslaughter, that shall be a good Plea to an Indictment for the same Murder, *viz.* That in the Appeal he was found not guilty of Murder, but guilty of Manslaughter. 4 *Rep.* 45. *Cro. El.* 276, 296.

In an Appeal of Murder for the Death of her Husband against the Defendant, *nuper de parochia Sci. Jacobi Westm. &c.* he pleaded in Abatement, that there is a Parish named St. *James* within the Liberty of *Westminster*, but no Parish named St. *James Westminster* only, and upon Demurrer this was held a good Plea. 3 & 4 *Ja.* 2.

If King can pardon burning on the Hand in Appeal.

It has been doubted if the Jury in an Appeal for Murder find the Defendant not guilty of Murder, but guilty of Manslaughter, whether upon such a Verdict, and Clergy allowed, the King can pardon the Burning in the Hand. *Cro. El.* 276, 464. *Dyer* 261. *Cro. El.* 632, 682. *Moor* 571. *Latch* 126. The Pleadings are entred at large in my Lord *Coke*'s Entries, *fol.* 57.

But my Lord, who has reported this Case, 5 *Rep.* 50. tells us, that upon Conference had with other Judges, Judgment was given, that the Queen might pardon the Burning in an Appeal; and the Reason he gives is, because 'tis no Part of the Judgment or Punishment, but only a Mark to signify that he shall not have his Clergy again; and this was also the Opinion of my Lord *Hobart*, in his Argument between *Searl* and *Williams*, *Hob.* 294. So that this Point is now settled.

Process in Appeal.

The Teste of the *Capias* must bear Date the same Day with the Return of the Writ of Appeal; and so every new Process must be dated on that very Day the other was determined; for the Intermission of a Day will make a Discontinuance, because by Law the Appellant must prosecute the Defendant *recenter & instanter*, so that the Appeal must be pursued *de die in diem*.

Several Defendants outlaw'd, all must appear.

If there are several Defendants, and all outlaw'd, and then all of them join in a Writ of Error, and one alone appears, the Outlawry shall not be reversed, altho' there is a plain and manifest Error in the Proceedings, without the Appearance of all, nor then neither, until a *Scire Facias* issued to the Lords mediate and immediate.

The

The Defendants cannot imparl but the Court may be adjourn'd by a *Dies datus* until ſuch a Day, and when they appear, and Iſſue is joined, the Appellant muſt pray a *Venire facias* immediately.

If the Appeal is removed by *Certiorari*, and the Plaintiff will not proceed, the Defendant may have a *Scire facias*, and upon *Nihils* returned, or a *Scire feci* and Default, the Defendant is diſcharged. How if the Appellant don't proceed, what Evidence not allowed in Appeals.

Evidence given for or againſt the Defendant in an Indictment, is no Evidence in an Appeal, and therefore the Court would not ſuffer the Witneſſes for the Appellee to depoſe what was given in Evidence upon an Indictment by a Witneſs then dead; but this was contrary to the Opinion of Judge *Twyſden*.

Apples and Pears.

APPLES and Pears, if ſold by Water Meaſure, it ſhall be round, and 18 Inches and an Half Diameter within the Hoop, and 8 Inches deep, and no more; and ſo in Proportion for a greater or a leſſer Meaſure, and heaped.

He who buys or ſells by other Meaſure forfeits for every Offence 10 *s.* one Half to the Informer, and the other to the Poor of the Pariſh where the Offence is committed.

Conviction muſt be by the Oath of one Witneſs before one Juſtice, Mayor, &c. and the Penalty is to be levied by a Warrant. 1 *Ann. c.* 15.

The Form of the Warrant.

To the Conſtable and Headborough of the Hundred of, &c.

WHereas L. M. *hath been duly convicted before me for ſelling Apples at* L. *on the* 22*d Day of* February *laſt paſt, in a Meaſure not round, nor* 18 *Inches and an Half Diameter within the Hoop, or* 8 *Inches deep; neither were the ſaid Apples heaped in the Meaſure out of which they were ſold, ſo that he hath forfeited* 10 *s. Theſe are therefore to require you forthwith to levy the ſaid* 10 *s. on the Goods and Chattels of the ſaid* L. M. *by Diſtreſs and Sale thereof, rendring to him the Overplus; and that you pay a Moiety thereof to* D. D. *who firſt informed* 1 Ann. c. 15.

me of the ſaid Sale, and the other Moiety to the Church wardens and Overſeers of the Poor of the ſaid Pariſh of L. *where the ſaid Offence was committed, for the Uſe of the Poor thereof: And hereof fail not. Given under my Hand and Seal,* &c.

Apprentices. Vide Servants.

Apprentice comes from Apprendre, (i.e.) addiſcere. 5 Eliz. c. 4.

EVery Houſhoulder uſing half a Plow-Land in Tillage, may take an Apprentice above 10 and under 18, to be bound by Indenture till 21 or 24. Every Houſholder in any Town corporate uſing any Art, Myſtery, or manual Occupation, may take an Apprentice for ſeven Years; he muſt be a Freeman's Son (not occupying Husbandry nor a Labourer) in the ſame, or ſome other corporate Town.

Merchants may not take an Apprentice except their own Sons, or the Parents of the Apprentice be worth 40 *l.* a Year clear, of one Eſtate of Inheritance, or Freehold at the leaſt, which muſt be certified under the Hands of three Juſtices of the County where the Eſtate lies.

N. B. Theſe Certificates were not much in Uſe, even when *Dalton* wrote; but now they are wholly diſuſed, neither is there Regard had of the Ability of the Parents whoſe Children are placed to any Trade whatever.

Such Artificers as expreſs'd in the Act, may take Apprentices whoſe Parents have no Land.

N. B. Woollen Weavers not taking Apprentices unleſs Father or Mother have 3 *l.* a Year, repealed by 5 & 6 *W.* 3. *c.* 9.

Upon Houſholder's Complaint to a Juſtice, he may cauſe any Perſon he thinks fit to be bound Apprentice, &c. Perſons fit to make Apprentices, refuſing to ſerve on Demand, may be committed by one Juſtice 'till willing to ſerve. A Proviſo for the Liberties of Worſted Weavers in *Norwich* and *Norfolk*, granted them by any former Act of Parliament.

5 Eliz. c. 4.

Mariners might take and keep one or more Apprentices bound and enrolled for 10 Years.

Owners of Ships or Veſſels, or any Houſholder uſing the Sea by Fiſhing or otherwiſe, &c. might take and keep one or more Apprentices to be bound for ten Years or under, by writing, indented and inrolled in the Town where ſuch Apprentice dwells, if it is a Town corporate; and if not, then in the next Town corporate. Stat. 5 *Eliz. c.* 4.

Since the making which Act, a Mariner took an Apprentice by Indenture, and there was a Bond for Performance of Covenants, the Apprentice ran away, the Bond was put in Suit, and the Obligee pleaded this Statute, and that the Indenture was not enrolled: But the Case was not argued, and so no Judgment given. 1 Lutw. 474.

But now by a late Act *anno* 2 *Ann.* Provision was made for putting poor Boys Apprentices to Seamen. Which see in Title *Seamen*. Vide Star. 2 Ann. &c.

An Information was brought on Statute 5 *Eliz.* for detaining an Apprentice in Husbandry, being bound 'till Twenty-one, and for departing without a Testimonial: Two Judges were of Opinion that it would not lie, because the Statute doth not extend to provide against the Departure of an Apprentice by Indenture, but an hired Servant. An Information will not lie on Stat. 5 Eliz. &c. Hetley 164.

If an Apprentice in Husbandry doth not perform his Duty, the Master may complain to one Justice, whose Business it is to reconcile them if he can; but if he cannot, then the Justice may send him to the House of Correction, or more regularly and safely may bind him over to the Sessions, and from thence he may be sent to the House of Correction. If an Apprentice in Husbandry, &c. Nelson 38.

Justices have not an express Power to discharge an Apprentice, if the Fault be in him, as they have if the Fault be in the Master: But they cannot punish a bad Master, though they may discharge the Apprentice, and they may either punish or discharge a bad Apprentice, as they shall think fit. Justices may either punish or discharge, &c. 1 Mod. 286. 2 Venr. 174. 1 Saund. 314.

Apprentice assaulting his Master, may be sent to the House of Correction; and a Master may justify striking an Apprentice. Apprentice assaulting, &c. Jac. Just. 27.

The Sessions in this Case have only an additional Power, *viz.* to discharge or punish, if one Justice can't compose the Difference; and therefore Application ought first to be made to him. Sessions, &c.

If the Fault be found in the Master, then the Justice may bind him over to the Sessions and four Justices there may discharge the Apprentice, which Discharge is to be inrolled by the Clerk of the Peace. If Fault in the Master, &c.

The Discharge must be under their several Hands and Seals; and therefore where the four Justices subscribed their Names, and there was but one Seal, the Order was quash'd. 1 *Ann. B. R.* Discharge, &c.

If Maſter and Apprentice agree, &c.

The Maſter and Apprentice may agree to leave each other; and in ſuch Caſe the Maſter may give Leave under his Hand to depart; and then one Juſtice out of Seſſions may diſcharge him, by allowing the Cauſe of putting him away.

Diſcharge muſt be in Writing.

But becauſe he cannot be made an Apprentice without Writing, therefore he cannot be diſcharg'd but by a Writing under the Hand of the Maſter.

Not allowing Meat, &c.

Not allowing Meat, Drink, or Wages agreed on; this is a good Cauſe to be allowed by the Juſtice, and ſo is Beating him unreaſonably. *F. N. B.* 168.

Any departing from his Service, &c.

Any departing from his Service whatſoever, refuſing to do any reaſonable Service, is a Departure in Law; but as to that Part of the Act, which ſays an Apprentice departing without a Teſtimonial ſhall be whipped as a Vagabond, it muſt be an Apprentice in Husbandry, and one of full Age; for otherwiſe an Infant, who is the Son of a Gentleman, may happen to be puniſhed as a Rogue. *Winch.* 25.

N. B. That if the Maſter ſhall put his Apprentice into Apparel, it is a Gift in Law, and he cannot after take it away, tho' he ſhould part with his Apprentice, &c. *Dalt.* 153.

If he ſteal above 12 d. &c.

If he ſteal any Thing from his Maſter above the Value of 12 *d.* not delivered to him to keep, on due Proof thereof made before one Juſtice, he may commit him to Gaol, together with thoſe who perſwaded him to commit the Felony, and thoſe who received the Goods, knowing them to be ſtoln; but if under that Value, then they may be all ſent to the Houſe of Correction by one Juſtice; but according to *Dalton* rather by the Seſſions. See Stat. 12 *Ann. c.* 7.

No Perſon, &c. 5 Eliz. c.

Apprentices ought to ſerve ſeven Years; and if any Perſon who hath not ſerved that Time in any Trade, ſhall uſe the ſame, or employ any therein who hath not ſerved out that Time, he is liable to a Penalty of 40 *s. per* Month. 5 *Eliz. c.* 4. This Law was made to encourage Skilfulneſs in Workmen, and that the Youth might be regularly brought up in ſome lawful Trade. *Noy's Rep.* 54.

Except Hemp-Dreſſers, &c.

But Hemp-Dreſſers, Makers of Hemp-Cloth, Nets, and Tapeſtry, are excuſed by Statute 15 *Car.* 2. *cap.* 15.

Now in what Court this Penalty is to be recovered, hath been a Queſtion formerly; but now by Statute 21 *Jac.* 1. *cap.* 4.

All

All Offences to be committed againſt any Penal Law, for which any common Informer may lawfully bring any popular Action, Bill, Suit, or Information, ſhall be commenced by way of Action, Plaint, Bill, Information or Indictment before Juſtices of Aſſize, *Niſi prius* Oyer and Terminer, or before Juſtices of Peace of every County, &c. where ſuch Offences ſhall be committed at the Choice of the Party who ſhall commence ſuch Suit, and not elſewhere (that is when the Party might bring the Action either above, or in an inferior Court) and that all Informations, &c. to be brought by the Artorney-General or Informer, in any Courts of *Weſtminſter*, for ſuch Offences, ſhall be void. This Clauſe was added by Serjeant *Rolls*.

Suits for all Offences, &c. 21 Jac. 1. c. 4.

This Statute hath been formerly held to reſtrain Informations above, but not an Action of Debt by a common Informer: But in *Hick*'s Caſe, 10 *W.* 3. it was reſolved and agreed by all the Judges, that this Statute reſtrains the Juriſdiction of *B. R.* in Actions of Debt by common Informers, and that they cannot bring Debt there, unleſs the Cauſe of Action ariſe in the County of *Middleſex*, where *B. R.* ſits; but when a Remedy is given by Action, by any ſubſequent Penal Law, ſuch Action is not reſtrained to the proper County, tho' Ch. Juſt. *Holt* was of Opinion, that where any ſubſequent Statute gives a popular Action, it muſt be laid in the proper County within the Equity of the Statute 21 *Jac.* 1.

This Stat. reſtrains even Actions of Debt, &c.

Any Trade in which there is an Art and Myſtery is within the Intent and Meaning of this Statute, ſo as it doth not purely conſiſt in Labour; and ſo as the Party gets his Livelihood thereby; but then ſuch Trade muſt be exerciſed in a Corporation or Market-Town not corporate; for it hath been held that the Statute extends to ſuch, and not to Trades uſed in Villages; and it hath been adjudged, that a Perſon ſerving as an Apprentice for ſeven Years, though not bound, is out of the Statute of 5 *Eliz.*

All Trades except thoſe of bodily Labour, &c. are within this Act.

Officers and Soldiers who have ſerved the Crown, and not deſerted, and who have formerly uſed any Trade, or were Apprentices, or any other Soldier who is apt and able to practice any Trade, may ſet up the ſame, as if they had ſerved out their full Time; and all others may ſet up Trades in any Place in the Counties where they were born; and if proſecuted for the ſame, then upon the General Iſſue pleaded, they ſhall be found Not guilty, and have treble Coſts; but the Proof of their Service

10 & 11 W. 3. c. 11. 12 Ann. c. 13. Officers and Soldiers who have not deſerted, &c.

must be by a Certificate under the Hand and Seal of ſome Field-Officer, or two Commiſſion-Officers of the Regiment where he ſerved, or ſome General-Officer of the Army; this Certificate to be proved by one Witneſs; or in Default of ſuch Certificate, by the Oath of two credible Witneſſes.

Any Perſon, &c.

Any Perſon may uſe privately any Trade for the Uſe of the Family whereof he is a Member. 8 *Co.* 129, 13. *a.* 11 *Co.* 54. But ſuch an one cannot retain an Apprentice.

The Seſſions have nothing to do concerning an Apprentice, before it comes before a private Juſtice. 1 *Mod.* 287.

Can't bring an Action, &c. Dalt. 126.

Every one bound an Apprentice according to the Statute 5 *Eliz.* tho' under Age, yet is compellable to ſerve his Time out, as if he were of Age when he was bound; but that is to be underſtood of a Compulſion by the Means preſcribed by that Statute, for the Covenant is not good, ſo as to enable the Maſter to bring an Action upon it, as was reſolved 5 *Car.* 1. *Cro. p.* 129. *Gilbert* v. *Fletcher.*

Bond not to uſe his Trade, &c. Dalt. 124.

So neceſſary are Trades to a Kingdom, that if a Man be bound not to uſe a Trade, that he hath been brought up in generally, that Bond is void; but a Man may bind himſelf, not to uſe a Trade in a particular Town or Pariſh.

If any Servant, &c. Dalt. 129.

If any Servant or Apprentice ſhall unlawfully depart or fly into another Shire, the Juſtice, *&c.* may grant Writs of *Capias* to the Sheriff or other Officer, whither the Servant is gone, to take his Body, returnable before them, *&c.* who ſhall impriſon the Offender till he find Surety to ſerve his Maſter again. 5 *Eliz. c.* 4.

Maſter cannot ſend, &c. 3 Bulſt. 164.

A Maſter cannot ſend an Apprentice beyond the Seas (except he go with him) but may ſend him to any Place of *England.* 3 *Bulſt.* 164. *Brown's* Caſe.

Action, &c. 1 Brownl. 67.

Action of Account is not maintainable againſt an Apprentice. *Brownl.* 67.

A Man may turn over, &c. Goldsb. 161.

By Cuſtom of *London,* a Man may turn over his Apprentice to any other within the City. *Goldſborough* 161.

Action lies for inticing an Apprentice.

Action lies by Maſter for inticing an Apprentice to depart from his Service; ſo if inticed to take Money or play. *March* 3. *Noy* 105.

If the Maſter dies before the Apprenticeſhip is expir'd, the Apprentice ſhall go to the Executor or Adminiſtrator if he hath Aſſets, and if he hath no Aſſets, then he muſt retire to the Pariſh where he was laſt ſettled. *Show. Rep.* 405.

'Tis

'Tis doubted whether the Quarter-Seſſions can diſcharge an Indenture of Apprenticeſhip where the Apprentice was not impoſed upon the Maſter by the Juſtices and compelled to Serve.

Whether the Seſſions can diſcharge an Apprentice not put out by Juſtices. 1 Vent. 147.

A Bond given by an Apprentice to deliver up a juſt and true Account, is not within the Clauſe of Stat. 5 *Eliz.* but agreed by all the Court to be a good Bond, being for a Collateral Matter. *Paſc.* 14. *Jac.* 1. *Bulſt.* 3. *Pl.* 179. *Bennet* v. *Belfield.*

Bond given for Apprentice to give a juſt Account, not within 5 Eliz. 3 Bulſtrode, 179.

An Upholſterer is a Trade within 5 *Eliz.* *Levinz. Rep.* 1 Part 243. *Keb.* Part 1. p. 366, 378, 390, 408, 436.

Upholſterer, &c. within 5 Eliz. 1 Levinz. 243. 1 Keble 366. 378, 390, 408, 436.

Apprentices are not within 5 *Eliz.* that if any Perſon retain'd depart from his Maſter, &c. but only hired Servants are within that Clauſe, and are to have a Teſtimonial. *Hil.* 6. *Car.* 1. C. B. *Het.* 164, 165. *Brown's* Caſe.

Apprentices not &c. 5 Eliz. of departing without a Teſtimonial, Het. 164, 165.

A Barber and a Saleſman are Trades within 5 *Eliz.* *Trin.* 32. *Car.* 2. *Raymond*, p. 385. *The King* verſus *Biſhop.*

Barber and Saleſman within 5 Eliz.

An Order made at the Quarter-Seſſions at *Glouceſter*, was remov'd into *B. R.* confirming another made by the Juſtices there, for placing a poor Boy to be an Apprentice in Husbandry, was quaſh'd, becauſe the Church-wardens were not mentioned in the Order. *Mich.* 1. *W. & M.* 3. 3 *Mod.* 269, 270, 271. *The King* verſus *Fairfax.*

Churchwardens mentioned in the Order for placing a poor Boy Apprentice to Husbandry.

Y. was a Merchant who exported Cloth to *Turky*, and he employ'd Men in his Houſe in the Trade of a Clothworker, who had been educated in the ſaid Myſtery for ſeven Years, and provided Materials for them, and paid them weekly Wages; but he himſelf was not an Apprentice to the Trade. Ch. Juſt. *Holt*, and two other Judges againſt the Opinion of *Dolben*, were of Opinion, That *Y.* was guilty of exerciſing the Trade of a Clothworker, againſt the Stat. 5 *Eliz.* *c.* 4. and therefore they gave Judgment againſt *Y.* *Mich.* 2. *W. & M. B. R. Mod. Rep.* 3d Part 316. *Hobbs qui tam, &c.* againſt *Young.*

Turky Merchant imploying, &c. in his Houſe, guilty of exerciſing the Trade of a Clothworker, within 5 Eliz. c. 4. 3 Mod. Rep. p. 313 Hobbs qui tam, v. Young.

On *Crane* was put Apprentice by the Juſtices of Peace to one *Browning*, who dies, Adminiſtration is committed to one *Pott*, the Apprentice falls ſick, and becomes chargeable to the Pariſh. The Juſtices make an Order for ſending him to *Pott* to maintain and provide for him; he appeals to the Quarter-Seſſions, and there the Order is confirm'd; the whole is removed into *B. R.* where all the Juſtices Orders were quaſh'd. *Trin.* 4 *W. & M. B. R. Shower's Rep.* 405.

Maſter dies, Apprentice ſick and becomes chargeable to the Pariſh, Juſtices ſend him to the Adminiſtrators, but the Order was quaſh'd in B. R. Shower's Rep 405.

K. &

Pott againſt the Inhabitants of Bedingfield. Aſſignment of Apprentice, &c. 5 Eliz. 3 Keb. 519.

K. & Q. againſt *Pott*, and the Inhabitants of *Bedingfield* in *Suffolk*.

The Aſſignment of an Apprentice, even tho' with his Conſent, will not make him an Apprentice to the Aſſignee, within 5 *Eliz. c.* 4. *Trin.* 27 *Car.* 2. *B. R.* 3 *Keble Rep.* 519. *Pl.* 81. *Rex* verſus *Chanrel*; but in *London* by the Cuſtom 'tis otherwiſe.

Juſtices have Conuſance of Apprentices, &c. 1 Keb. p. 6.

Juſtices of Peace have Conuſance of Apprentices bound by Indentures, or otherwiſe, as well by private Perſons as by the Overſeers of the Poor. *Paſch.* 13. *Car.* 2. 1 *Keb.* p. 6.

A Brewer, &c. within 5 Eliz. Cro. Ja. p. 178. Co. 8. 129 b. 13 Co. p. 11. And ſo is a Woollen Draper, &c. Sand. Rep 311. Sid. 1. p. 427.

A Brewer is within the Stat. 5 *Eliz. c.* 4. and ſo adjudged. *Trin.* 5. *Jac.* 1. *Cr. Ja.* 178. *Shoyle* verſus *Taylor*. This Judgment affirmed upon a Writ of Error. *Mich.* 6. *Jac.* 1. *Co.* 8. *f.* 129. *b.* and *Rep.* 13. p. 11.

And ſo is a Woollen Draper, notwithſtanding he be a Freeman of *London*, *Mich.* 21 *Car.* 2. *Sand's Rep.* 1. p. 311. *Rex* verſus *Kilderby*. *Siderf.* 1. p. 427.

Juſtices have ſame Power of diſcharging, &c.

The Juſtices of Peace have the ſame Power of diſcharging Apprentices upon the Complaint of the Maſter againſt the Apprentice, as upon Complaint of the Apprentice againſt the Maſter. *Mich.* 21 *Car.* 2. *Saunders*, p. 315. *Hawkſworth* verſus *Hillary*. *Trin.* 29 *Car.* 2. *B. C.* 1 *Mod.* p. 286. *Watkins* verſus *Edwards*.

A Merchant-Taylor no Trade within 5 Eliz.

Indictment on Stat. 5 *Eliz.* for exerciſing the Trade of a Merchant Taylor, and quaſh'd, becauſe not a Trade uſed before the Statute, and much leſs a Trade within the Statute.

A Tradeſman's Widow can't uſe a Trade unleſs apprenticed to it. *Black.* 17.

By Stat 8 *Eliz. c.* 2. a Hat-maker is not to have above two Apprentices at one Time, upon Pain of being committed for a Month.

Indictment for uſing the Trade of a Taylor, not having ſerv'd as an Apprentice ſeven Years, was quaſh'd, becauſe only ſaid not having ſerv'd as an Apprentice *infra Regnum Angliæ aut Walliam*; for it may be he did ſo beyond Sea; and if it were any where it ſuffices. 1 *Salk.* 67. in *Maddox's* Caſe. *Paſch.* 5 *Ann. B. R.* it was held upon Indictment, on the Stat. 5 *Eliz.* that following a Trade for ſeven Years is ſufficient without any Binding. 2 *Salk.* 613. *Paſch.* 11 *W.* 3. *B. R. Rex* verſus *Fox*.

Poor Apprentices. 43 *Eliz.* c. 2.

1. Who ſhall be bound, and by whom.
2. Who ſhall take them, and at what Age.
3. How the Money to put them out ſhall be raiſed and diſpoſed.

1. Who ſhall be bound.

Poor Children of ſuch Parents as are not able to maintain them, may be put out Apprentices, and the Parents refuſing to ſuffer them, may be bound over to the Seſſions.

But this muſt be by the Aſſent of two Juſtices; and the Overſeers of the Poor, or the greater Part of them, are to place out ſuch Children; and the Law hath made them Judges of the Diſability of the Parents, and one Juſtice may compel any Perſon meet to be bound.

Dalt. 107. Muſt be bound by Overſeers, &c. with Aſſent of two Juſtices, &c.

There is no Neceſſity of giving Money with them, 'tis Diſcretionary in the Church-wardens whether they will give any or not.

Dalt. 103. 'Tis Diſcretionary to give Money with them, but not neceſſary.

2. Who ſhall take them.

Every Man of good Eſtate or Ability may be compelled to take Apprentices, or every Man who by his Profeſſion or Manner of Living muſt keep ſuch Servants; for the Power given to Church-Wardens to place them out, doth neceſſarily imply, that ſuch who are fit to be Maſters muſt take them.

Dalt. 106.

By Statute 8 & 9 *W.* 3. if a Church-Warden maketh Oath before two Juſtices that a Maſter refuſes to take a poor Apprentice, he ſhall forfeit 10 *l.* to be levied by Warrant of the ſaid Juſtices, and Diſtreſs thereupon for the Uſe of the Poor; but the Party may appeal to the next Seſſions, whoſe Order is final; and Clergymen are not exempted from taking Apprentices.

If any refuſe to take them Apprentices, &c. forfeit 10l. by 9 & 10 W 3.

The Juſtices may diſcharge an Apprentice, and order a Reſtitution of the Money, and if the Maſter is not bound to appear at the Seſſions, yet they may proceed to make an Order againſt him.

Juſtices may Diſcharge, &c. and order reſtitution of Money &c. Nelſon, 42.

The

Church-wardens can't place them, &c. but Juſtices may. Ibidem.

The Church wardens cannot place them to Maſters in another Pariſh, but the Juſtices in Seſſions may; and if there are not Maſters fit to receive them in any Hundred, then they may be put out in the County at large; but this muſt be by the Seſſions.

Apprentice goeth to the Adminiſtrator, if Aſſets, if not, to the Pariſh, where laſt ſettled. Shower's Rep. 405.

Leſſee for Years of a Farm taketh an Apprentice, and the Term expires before the Apprenticeſhip ended, he muſt go with the Farm, if his Maſter will permit him; but where a Man taketh an Apprentice by reaſon of his Ability, and the Maſter dieth before the End of the Apprenticeſhip, he ſhall go to the Executor or Adminiſtrator, if he hath Aſſets, and if none, then he muſt return to the Pariſh where laſt ſettled. *Shower's Rep.* 405.

Indictment againſt Maſter refuſing to provide for a poor Apprentice does lie, ſince Stat. 8 and 9 W. 3.

Indictment, for that a poor Boy being put out Apprentice purſuant to the Statute, the Maſter refuſed to provide for him, and this was held good ſince the Statute 8 & 9 *W.* 3. *viz.* 3 *Ann. B. R.*

Money may be raiſed weekly or otherwiſe.

3. How the Money ſhall be raiſed. By the Overſeers weekly, or otherwiſe by Taxing every Inhabitant, Parſon, Vicar, and Occupier of Lands, Houſes, Tithes, *&c.* as they ſhall think fit.

Money to be imployed by Corporation, in other places by Parſon with Conſtable, &c.

By Stat. 7 *Ja.* 1. *ch.* 3. Money given to put out poor Children Apprentices, if in Towns Corporate, ſhall be employ'd by the Corporation; if in other Places, then by the Parſon, together with the Conſtable, Church-wardens, and Overſees, *&c.* or the greater Part of them; who if they refuſe forfeit five Marks each of them to the Uſe of the Poor; and if any Perſon act contrary to his Truſt, a Commiſſion out of Chancery may be awarded to certain Perſons to enquire into it.

Maſter muſt give Security to repay the Money at ſeven Years End.

The Maſter muſt give Security to repay what Money he takes with an Apprentice at the End of ſeven Years next enſuing the Date of the Bond, or within one Year after the Death of his Apprentice, if he die within that Time.

If no fit Perſons to be Apprentices in the Place where the Money is given, it may be employed in the Pariſhes adjoyning.

Truſtees muſt Account in Eaſter-Week.

The Truſtees muſt Account in *Eaſter* Week to the two next Juſtices.

They

They must be above seven, and under fifteen, for if above that Age they cannot be compelled, but they must Work or go to Service, or be sent to the House of Correction, or be bound over to the Sessions, or to their good Behaviour.

At what Age poor Apprentices may be bound. 1 Ja. 1. c. 3.

The Man Child shall be bound 'till he come to the Age of twenty four Years.

Above the Age of ten Years any Person may be bound by his own Agreement by Indenture, *&c.* and if above twelve he may be compelled by a Justice.

At what Age Apprentices to Trades upon Stat. 5. Eliz. c. 4. may be bound.

N. B. By Statute 12 *Ann. S.* 2. *c.* 23. Such as have no legal Settlement, or Vagrants, or common Beggars, or two Years past (tho' formerly settled) or dangerous and incorrigible Rogues, within that Act, may be forced to serve seven Years Apprenticeship to any that will take them, and may be afterwards sent to the Plantations, provided the Master give a Recognizance of 40 *l.* not to sell them to any Alien; and any Justice may take such Recognizance, and must transmit it to the next Quarter-Sessions, to be there filed.

Persons who have been Beggars two years may be bound Apprentices and sent to Plantations.

It was a Question whether an Indictment would lie for enticing a Servant, or an Apprentice out of his Master's Service, and to carry off his Goods, for 'tis but a private Injury, and not in its Nature publick, and therefore an Action on the Case lies for enticing; but Trespass will lie for taking him out of his Actual Service; and the Court upon a Motion in Arrest of Judgment, was of that Opinion that an Indictment would not lie.

Indictment will not lie for inticing away a Mas.'s Apprentice, &c.

Poor Boys, ten Years old, whose Parents are chargeable to the Parish, may with the Consent of two Justices, *&c.* be put Apprentices to the Sea-Service till 21 Years of Age, and the Overseers, *&c.* shall pay the Master, when the Boy is bound, 2 *l.* 10 *s.* for cloathing and bedding, and be allowed it in their Accounts. A Master of a Ship from 30 to 50 Tons, refusing one such Apprentice, shall forfeit 10 *l.* Poor Boys bound to other Employments, may be turned over to a Master of a Ship by Statute 2 *Ann. c.* 6.

Poor Boys ten Years old may be put Apprentice to the Sea Service till 21 Years of Age, &c.

Ann. 2 & 3 c. 6.

Forfeitures to be levied by Distress and Sale by Warrant from two Justices, who may hear and determine all Complaints from Parish Boys bound Apprentices to Sea.

Using of a Trade for Profit or Gain, is an Exercising within the Statute 5 *Eliz. c.* 4. But a Man may keep a Shop in a Country Village for the Convenience

Keeping a Shop in a Village, not within 5 Eliz. 1. Vent. Rep. p. 51.

nience of the Inhabitants, and not be within the Statute.

Apprentices to Persons coming into a Parish by Certificate gain no Settlement. Le Strange's Justice 10

Persons coming into any Parish by Certificate, and taking Apprentices by Indentures, such Apprenticeship shall not make a legal Settlement in such Parish (unless such Master had gained a legal Settlement in the said Parish after Certificate given) but such Apprentice shall have his Settlement in such Parish, &c. as if he had not been bound Apprentice.

12 Ann. c. 18. Collectors not keeping a Register of Parish Boys, &c. by 2 Ann. c. 6. forfeit 5 l.

Collectors of the Customs not keeping an exact Register of the Number and Burthen of all Ships, &c. with Masters and Apprentices Names in each Ship, and from what Parishes and Places sent; or of transmitting true Copies thereof to the Quarter-Sessions, as often as they shall be required, forfeit 5 l. 2 *Ann. c.* 6.

Unmarried Person, &c.

It shall be adjudged a good Settlement if an unmarried Person, having no Child or Children, be bound Apprentice for above a Year, tho' no Notice, &c. unless in Case of a Certificate as above.

No Apprentices bound out by Parish shall be pres'd, &c. 2 and 3 Ann. c. 6.

No Apprentices bound out by two Justices of Peace, &c. and Church-Wardens, &c. of the Parish shall be impressed or listed into her Majesty's Service at Sea till he arrive to the Age of 18 Years. 2 & 3 *Ann. c.* 6.

No Masters of Ships shall be obliged to take Boys Apprentices under 13. 4 and 5 Ann. c. 19.

No Masters of Trading Ships shall be obliged to take Parish Children Apprentice as directed by Statute 2 & 3 *Ann. c.* 6. (Vide *supra*) under the Age of thirteen Years, or who shall not appear fitly qualified for that Service as to Health and Strength; and Widows and Executors of such Masters, may assign over such Apprentices to other Masters who have not their Complement requir'd by the said Act.

No Person of 18 shall have exemption from being pres'd, &c. 4 and 5 Ann. c. 19.

No Person of the Age of eighteen Years shall have any Exemption or Protection from his Majesty's Sea-Service, who shall have been in any Sea-Service before the Time they bound themselves Apprentices, the aforesaid Statute, or any other Law to the contrary notwithstanding.

An Indenture to place a poor Boy out Apprentice.

43. Eliz. c. 2.

THIS *Indenture made*, &c. *Witnesseth*, *That* A. B. C. D. *Church-wardens of the Parish of*, &c. *in the said County of*, &c. *and* E. F. &c. *Overseers of the Poor of the said Parish, by and with the Consent of two of*

his Majeſty's Juſtices of the Peace of the ſaid County, whoſe Names are hereunto ſubſcribed, have put and placed, and by theſe Preſents do put and place E. L. *a poor Child of the ſaid Pariſh, Apprentice to* N. B. *of,* &c. *with him to dwell and ſerve from the Day of the Date of theſe Preſents, until the ſaid Apprentice ſhall accompliſh his full Age of,* &c. *according to the Statute in that Caſe made and provided; during all which Term the ſaid Apprentice his ſaid Maſter faithfully ſhall ſerve in all lawful Buſineſſes, according to his Power, Wit, and Ability, and honeſtly, orderly, and obediently in all Things demean and behave himſelf towards his ſaid Maſter, and all his, during the ſaid Term. And the ſaid* N. B. *for himſelf, his Executors, and Adminiſtrators, doth Covenant and Grant, to, and with the ſaid Church-wardens and Overſeers, and every of them, their and every of their Executors and Adminiſtrators, and their and every of their Succeſſors for the Time being, by theſe Preſents, That he the ſaid* N. B. *the ſaid Apprentice in the Trade of,* &c. *which he now uſeth, ſhall and will teach and Inſtruct; and during all the Term aforeſaid, find, provide, and allow unto the ſaid Apprentice meet, competent and ſufficient Meat, Drink and Apparel, Lodging, Waſhing, and all other Things neceſſary and fit for an Apprentice, and alſo ſhall and will ſo provide for the ſaid Apprentice, that he be not any ways a Charge to the ſaid Pariſh or Pariſhioners of the ſame; but of and from all Charge ſhall ſave the ſaid Pariſh harmleſs, and indemnified during the ſaid Term; and at the End of the ſaid Term ſhall and will make, provide, allow, and deliver unto the ſaid Apprentice double Apparel of all Sorts, good and new (that is to ſay) one good new Suit for the Holidays, and another for the Working Days. In Witneſs,* &c.

We W. B. *and* E. S. *Eſqs; two of his Majeſty's Juſtices of the Peace for the County aforeſaid, do hereby declare our Conſent to the putting forth of the aboveſaid* E. L. *Apprentice to the ſaid* N. B. *according to the Intent and Meaning of the Indenture above written.*

A Warrant againſt an idle and diſorderly Apprentice.

WHereas Complaint hath been made unto me by A. B. *of,* &c. *Blackſmith, That* C. D. *his Apprentice, is not only a negligent, but ſtubborn and diſorderly Servant, and very much Misbehaves himſelf towards the ſaid* A. B. *Theſe* 5 Eliz. c. 4.

are

are therefore to command you to bring both the ſaid A. B. *and* C. D. *before me or ſome other Juſtice of the Peace for the ſaid County to be examined in the Premiſſes, and that ſuch Order may be made between them as to Juſtice appertains. Given*, &c.

He may be ſent to the Houſe of Correction.

A Warrant againſt an Apprentice for departing from his Maſter.

5 Eliz. c. 4. The Juſtice may grant this Warrant upon Complaint of the Maſter, and he may reconcile the matter if he can; but I do not ſee how he can puniſh an Apprentice by Indenture; the Seſſions may.

Staff. ſſ. *WHereas Complaint hath been made unto me by* W. B. *of* L. &c. *That* W. C. *his Apprentice hath lately departed from his Maſter contrary to Law, Theſe are therefore in his Majeſty's Name to command you, That you Apprehend the ſaid* W. C. *as ſoon as he can be found within your ſeveral Limits, or in either of them, and to bring him before me, or ſome other Juſtice of Peace for this County, to Anſwer the Premiſſes. Given under my Hand and Seal*, &c.

An Information will not lie in this Caſe; but an Action on the Caſe againſt him who receives an Apprentice by Indenture, and an Action of Covenant againſt the Apprentice himſelf.

A Warrant againſt a Maſter for abuſing his Apprentice.

5 Eliz. c. 4.

Staff. ſſ. *WHereas Complaint hath been made unto me by* R. J. *Apprentice to* R. N. *of the Pariſh of*, &c. *Weaver, That the ſaid* R. N. *doth not allow unto his ſaid Apprentice ſufficient Meat, Drink, and Apparel, and hath often immoderately corrected him without any juſt Cauſe*, &c. *Theſe are therefore* (*as in the former Warrant.*)

Or Mayor, or Head Officer of a Corporation.

This Warrant muſt be made by the Juſtice where the Maſter dwelleth; and if the Juſtice cannot reconcile them, he may bind the Maſter over to next Seſſions, whereof 4 Juſtices, *Quorum unus*, may Diſcharge the Apprentice under their Hands and Seals.

Note; The Practice now is for one Juſtice to bind over the Maſter at the Complaint of the Apprentice to the next Seſſions, and then Four Juſtices to diſcharge under their Hands and Seals; and upon Complaint of the Maſter againſt the Apprentice, to ſend the Apprentice

prentice to the Houſe of Correction, if he will not agree to appear at the Seſſions; and at the Seſſions, ſuch Order is to be made under the Hands and Seals of Four Juſtices, as is juſt.

Four Juſtices at a Private Seſſions had diſcharged an Apprentice, and after at a General Seſſions, the Juſtices finding their Miſtake ſet that Order aſide; and now they come into the *King's Bench*, and move to have the Order of the General Seſſions ſet aſide, for that the firſt Order was according to Law; but the Court denied it, and ſaid, that an Apprentice could not be diſcharged but by General Seſſions according to 5 *Eliz.* *Skinner* 98. *Anonymus.*

If the Indenture of an Apprentice in *London*, by the Default of the Maſter, be not inrolled within a Year, the Apprentice may ſue out his Indenture, and ſhall be diſcharged; but if it be the Default of the Apprentice, as if he will not come before the Chamberlain of *London*, to have it done there, he ſhall not be diſcharged. 1 *Roll. Rep.* 305. *Palm.* 361.

The Diſcharge.

Staff. ſſ. WE H. P. T. N. J. S. *and* R. B. *four of his Majeſty's Juſtices of the Peace* (*one whereof is of the* Quorum) *for the County aforeſaid, having heard and examined the Matter in Difference between* R. J. *an Apprentice to* R. N. *of*, &c. *and it appearing to us that the ſaid* R. N. *hath not allowed his ſaid Apprentice ſufficient Meat*, &c. *and hath ſeveral Times beaten him very immoderately, without any juſt Occaſion: We do therefore for the Cauſe aforeſaid diſcharge the ſaid* R. J. *from his ſaid Apprenticeſhip; And do hereby under our reſpective Hands and Seals, pronounce and declare, That the ſaid* R. J. *is diſcharged from being any longer an Apprentice to his ſaid Maſter. Witneſs our Hands and Seals*, &c. 5 Eliz. c. 4.

This Diſcharge muſt be Enrolled by the Clerk of the Peace or Town-Clerk, which ſhall be good againſt the Maſter, his Executors, and Adminiſtrators.

A Warrant againſt a Maſter to levy the Penalty of 10 *l.* for refuſing to receive an Apprentice.

8 & 9 W. c. 30. Two Juſtices recite the Indenture.

Staff. ſſ. WHereas R. J. *a poor Male Child, was by the Church-wardens and Overſeers of the Poor of the Pariſh of*, &c. *by and with the Aſſent of* R. B. *and* W. N. *two of his Majeſty's Juſtices of the Peace for the ſaid County, lately placed and bound by Indenture as an Apprentice to* T. P. *of* &c. *to dwell with him from the Date of the ſaid Indenture, until the ſaid* R. J. *ſhould attain his Age of* 24 *Years, purſuant to the Statute in that Caſe made and provided. And whereas* J. O. *one of the Churchwardens of the Pariſh of*, &c. *hath made Oath before us, That the ſaid* T. P. *doth refuſe to receive the ſaid* R. J. *and provide for him as by Law he ought to do; and doth alſo refuſe to Seal a Counterpart of the ſaid Indenture. Theſe are therefore in his Majeſty's Name to Command you*, &c. *to levy the Sum of* 10 *l. by Diſtreſs and Sale of the Goods of the ſaid* T. P. *for the Uſe of the Poor of the* * *Pariſh of*, &c. *And hereof fail not. Given under our Hands and Seals*, &c.

* Where the Offence was committed.

Indictment for uſing a Trade, not being Apprentice to it Seven Years.

Staff. ſſ. JUr. &c. quod F. C. nuper de S. in Com̃ S. pred̃ Yeoman, decimo Octavo die Auguſti Anno, &c. & continue poſtea uſque diem caption' hujus inquiſitioñ ſcilicet decimum diem Octobris Anno, &c. exiſten' per ſpatium trium Menſium integrorum apud S. pred̃ in Com̃ pred̃ illicite pro lucro ſuo proprio uſus fuit exercuit & occupavit artem, Myſterium ſive Manual' Occupationem Piſtoris (Anglice a Baker) exiſteñ arte Myſterio ſive Manual' Occupat' infra hoc Regnum Angliæ duodecimo die Januarii Anno Regni Domine Elizabethæ nuper Regine Angliæ, &c. quinto uſitat & occupat ubi revera idem F. C. eodem duodecimo die Januarii Anno Regni dicte Dom̃ Elizabethæ nuper Regine Angliæ & quinto ſupradicto non uſus fuit aut exercuit legitime pred̃ artem Myſterium ſive Manual' Occupat Piſtoris pred̃ nec aliquam al' Artem Myſterium ſive Manual' Occupat nec unquam poſtea educat fuit in pred̃ Arte Myſterio ſive Manual' Occupat Piſtoris

Piſtoris per ſpatium Septem Annorum tanquam Apprentic' (Anglice an Apprentice) contra Formam Statuti de dicto Anno quinto Regni dicte Domine Elizabethæ nuper Regine Angliæ, &c. in hujuſmodi caſu nuper edit & provis' nec non contra pacem dicti Dom̃ Regis nunc Coron & dignitat ſuas.

Armour, Army, Militia. Vide Soldiers, &c.

SEE Stat. 2 *Edw.* 3. *c.* 3. 7 *Rich.* 2. *c.* 13. 20 *Rich.* 2. *c.* 1. againſt Riding armed, &c. Theſe Acts, eſpecially the laſt, have had ſo good an Effect upon the People, that it was not put in Execution for above twenty Years after it was made, and then a Quarrel happening between Sir *Thomas Pigott* and Sir *John Trevor*, the firſt carried Arms ſecretly under his Garments as well before the Judges of the King's Bench as others, for which he was committed by the Chief Juſtice, and his Arms taken from him, and not enlarged till the King's Pleaſure was known.

Sir Thomas Pigott for carrying Arms under his Garments, was committed and his Arms taken away.

And I think few Proſecutions have been upon this Law ſince that Time; but there was one in *Mich.* 2. *Jac.* 2. againſt Sir *John Knight* for walking about the Streets at *Briſtol* with a Gun, and coming to Church ſo armed; it was tried at the Bar in *B. R.* and the Defendant acquitted.

Sir John Knight proſecuted for carrying a Gun, &c. but acquitted.

Any Perſon may uſe Force and Arms in the Defence of his Perſon or Houſe againſt Robbers, or in Hue and Cry, or againſt thoſe who ſhall aſſemble to do him any Violence; or to ſuppreſs Riots; but the ſafeſt Way is to be armed in Aſſiſtance of the King's Officers or Miniſters of Juſtice.

Any Perſon may uſe Arms to defend himſelf, &c.

The Armour of Recuſants convict ſhall be taken from them by Warrant of four Juſtices of Peace at Quarter-Seſſions, and yet they ſhall be charged to the Militia according to their Ability.

The Arms of Recuſants to be taken away. 4 & 5 W. & M.

If they conceal their Arms, or give any Diſturbance in the Delivery, one Juſtice may commit them for three Months without Bail.

If they conceal them, to be committed, &c.

Any Juſtice may command Weapons to be taken from a Priſoner brought before him.

A Juſtice may command, &c.

Arms, Munition, and Gun-powder ſhall not be imported without the King's Licenſe, under Pain of Forfeiture of the Goods, and treble the Value; one Moiety

Arms, &c. ſhall not be imported without the King's Licenſe.

Moiety to the King, the other to the Proſecutor, by Action of Debt, &c. 1 *Ja.* 2. *c.* 8.

Patent for ſole making Gunpowder, &c. void.

Thoſe who obtain Letters Patent for ſole making of Arms, or Gunpowder, and put the ſame in Execution, are made guilty of a Præmunire, and the Grants are void, any Clauſe of *Non Obſtante* notwithſtanding.

'Tis Treaſon to aſſemble, &c. to pull down Incloſures.

'Tis High Treaſon in ſuch as agree to arm themſelves, and go from Houſe to Houſe to get Aſſiſtance to pull down Incloſures, &c. but if ſuch Perſons have an Intereſt, it amounts but to an High Miſdemeanour, *Poph.* 121.

Arreſt and Impriſonment.

A Rreſt comes from the *French* Word (*Arreter*) which ſignifies to ſtop, or apprehend, and may be called the Beginning of Impriſonment. And as a Peer of the Realm may be arreſted by Writ iſſuing out of the Court of King's Bench for a Contempt or Breach of the Peace, ſo any Perſon under the Degree of a Baron may be arreſted by Warrant from a Juſtice of Peace for any Miſdemeanor, or any Thing acted againſt, or contrary to the Peace of the Kingdom. *Dalt.* 446.

A Peer may be Arreſted for Breach of the Peace by K. B. &c. Dalt. 446.

A Feme Covert may be arreſted for a Riot; a Clergyman may likewiſe be arreſted, tho' not in Divine Service, which is a Protection *pro tempore*; and ſo may an Infant, if he cannot find Sureties for the Peace, and if it be for Breach of any Statute wherein he is charged.

A Feme covert, a Clergyman may be arreſted, &c. ibid.

If an Affray is committed, and the Offenders make their Eſcape into another County, the Conſtable may nevertheleſs purſue them in the other County, and in caſe of Felony he may juſtify Breaking open Doors to take the Criminal. *Dalt.* 451.

In an Affray, Conſtable may purſue, &c. Dalt. 451.

In Caſe of Commitment by a Juſtice of Peace, it muſt be made to the common Gaol by Mittimus under his Hand and Seal, ſetting forth the Cauſe; and it ought to conclude, there to remain till he be delivered by due Courſe of Law. *H. P. C. c.* 94. unleſs otherwiſe appointed by ſome Statute.

Mittimus muſt be under Hand and Seal, H. P. C. c. 94.

Where a Perſon is dangerouſly wounded in an Affray, Parks are unlawfully hunted, where Guns are kept by Perſons not qualified, and to apprehend in all criminal Caſes where any one is in Danger of Life or Limb, any private Man may arreſt another without Warrant;

In what Caſes private Perſons may arreſt, 3 Inſt. 118.

ſo

ſo alſo where a Felony is committed, every Man preſent muſt endeavour to take the Criminal, or may be fined and committed; and in ſuch Caſe, any Perſon in Company of the Offenders, or ſuſpected, tho' upon common Report only, may be apprehended; and if any Reſiſtance be offered by ſuch ſuſpected Perſon, you may juſtify the Beating him, 3 *Inſt.* 118, and when taken, he muſt be brought to the Conſtable, and if he is not to be found, then to the Juſtice, in order to his Commitment.

If any Breach of the Peace be made in the View of the Conſtable, he may put the Offenders in the Stocks, or ſecure them in his own Houſe, till he can bring them before a Juſtice; ſo he may where any Felony is committed, or Blow given, or if an Aſſault be made on himſelf, *H. P. C. c.* 92. And a Conſtable may likewiſe put a Felon in the Stocks for a reaſonable Time, till he can get proper Aſſiſtance to convey him to Gaol.

If any Breach of the Peace be made, Conſtable may put Offenders in the Stocks, &c. H. P. C. c. 92.

A Juſtice of Peace has Power to commit thoſe who offend againſt Penal Laws in his Preſence and View, and any Perſon aſſiſting him, (firſt making known the Cauſe, and deſiring that the Doors may be opened,) may juſtify Breaking open a Houſe to apprehend a Felon where there is a legal Warrant to do it; ſo likewiſe to apprehend one who hath dangerouſly wounded another, and where an Affray is, and the Doors ſhut, and alſo upon forcible Entry, the Conſtable may break open Doors; and ſo may the Sheriff upon an Outlawry in a perſonal Action, and upon a Warrant for the Peace or good Behaviour, and generally in all Caſes where the King is Party.

In what Caſes Officers of Juſtice may break open Doors. Moore, 606. H. P. C. c. 90.

A Conſtable having a Warrant for the Party to appear before a Juſtice of Peace, muſt lay hold on his Perſon, or elſe 'tis no Arreſt. *Dalt.* 445.

Conſtables having a Warrant, ſhould lay hold on Offender.

When an Offender is arreſted, and brought before a Juſtice, ſuch Juſtice, where he hath Power by Statute to bind him over, or cauſe him to do any Thing, and the Offender refuſeth, may commit him till he complies; and if he flieth into another County and is taken, there he ſhall be committed to Gaol where taken, and not where the Felony was done.

What is to be done when an Offender is arreſted, &c.

Any Gaoler may make his own Houſe a Gaol for a Day and a Night, but a Juſtice is obliged to ſend the Offender to the common Gaol. *Cro. Eliz.* 829.

Gaoler may make his own Houſe a Gaol, &c. Cro. Eliz. 829.

Where Impriſonment is directed by any Statute, and no Time limited for the Commitment of the Offender, it muſt be preſently; and where no Time is limited for his Continuance in Cuſtody, there 'tis in the Diſcretion

Where Impriſonment is directed, &c. 3 Rep.

cretion of the Court. And he muſt be kept in *Salva Cuſtod.* for if the Gaoler ſuffer him to go abroad, altho' he return to the Priſon, 'tis an Eſcape, and the Gaoler may be fined, Impriſonment being a Part of the Puniſhment of the Offender. 3 *Rep.*

Gaoler refuſing, &c. Dalt. 451.

If a Gaoler refuſe to receive an Offender, the Conſtable muſt bring him to the Town where taken, where he is to be kept till the next Aſſizes, when the Gaoler muſt be puniſhed.

Whither a Priſoner for Debt is to be carried, &c. 22 & 23 Car. 2. c. 20.

By Statute 22 & 23 *Car.* 2. *c.* 20. A Priſoner when taken, muſt not be carried to a Victualling-Houſe without his Conſent, ſo as to charge him with any Thing for Meat or Drink; nor more taken for the Arreſt than the Law requires, nor any Reward exacted for keeping him out of Gaol, till he can find Bail, or agree; nor more taken for a Night's Lodging or other Expences, than ſhall be allowed by the next Juſtice, or in Seſſions.

And by a Stat. made 2 G. 2. no Bailiff ſhall carry any Perſon arreſted to a Tavern, or Alehouſe, without his free Conſent, nor demand any greater Sum than the Law allows for the Arreſt, or waiting, &c. nor ſhall carry any ſuch Perſon to Priſon within 24 Hours from the Time of the Arreſt, or receive any greater Sum for one or more Nights Lodgings, or a Day's Diet, than is allowed by Order of Juſtices of Peace. Stat. 2 G. 2.

Priſoner to bear the Expences, &c.

But the Offender muſt bear the Expence of his carrying to Priſon, if able, and if not able, then the Town where he was taken muſt bear ſuch Expence; and if they refuſe, they may be diſtrained; and if the Priſoner refuſe to be at the Charge (being able) the Juſtice may direct a Warrant to the High Conſtable or Petty Conſtable of the Town, where he hath any Goods, to ſell as much as will ſatisfy the ſame.

A Juſtice may grant, &c. Dalt. 449.

A Juſtice of Peace may at his Diſcretion grant a Warrant to take up any Perſon whom he ſhall ſuſpect to be inclined to break the Peace. *Dalt.* 449.

Officer, &c.

Seſſions may award a *Capias* againſt a Perſon indicted, and by Virtue thereof, the Officer may break open Doors.

A ſworn Officer needs not ſhew his Warrant.

At Common Law, the Gaoler could not put Irons upon a Priſoner, but by the Statute of *W.* 2. *c.* 11. 'tis enacted, That *carceri mancipetur in ferris.*

What is a good Arreſt, &c. Plowd. 364.

If a Bailiff ſay to a Man, being preſent, I arreſt you, although he touch him not, this is a good Arreſt; and if the Party go away, it is a Reſcue. 8 *Car.* 1. *B. R.* Sir *James Wingfield's* Caſe.

For

For Breach of a Statute-Law, an Infant ſhall not be impriſon'd, unleſs expreſſed in the Statute. *Plowd.* 364. *a.*

The Liberty of every Subject is ſpecially favoured by the Common Law, inſomuch, that if an Officer (whoſe Actions are favourably interpreted) ſhall unduly impriſon any Perſon by an uſurped Juriſdiction, it is grievouſly puniſhable. *Magna Charta c.* 29. 5 *Ed.* 3. *c.* 9. and the Petition of Right. 3 *Car.* 1. *Co.* 10, 75. Therefore Commiſſions to arreſt Men were held to be againſt Law. *Dalt.* 447.

The Liberty of the Subject, favoured by Common Law. &c. Dalt. 447.

Hue and Cry after a Perſon ſuſpected of Felony, is ſufficient Cauſe to arreſt him, tho' no Felony is committed. *Dalt.* 448.

Hue and Cry, &c. Dalt. 448.

A Perſon taken in Execution eſcapes into another County; yet the Sheriff, &c. upon freſh Purſuit may take him there, and he ſhall be ſtill in Execution. *Co. Rep.* 3. 52. *b.* And ſo it is of a Perſon taken by a Conſtable on a Juſtice of Peace his Warrant.

One taken in Execution, &c. Dalt. 451.

If the Warrant be to arreſt or take one that ſtandeth indicted of Felony, then may the Officer juſtify the Killing of ſuch a Perſon, if he ſhall reſiſt or fly, or that he cannot otherwiſe be taken.

A Conſtable or other ſuch Officer, that ſhall impriſon in the Stocks any Offender for Felony or Suſpicion thereof, may lock the Stocks; and if need be, may alſo put Irons upon him, as it ſeemeth, and while he conveyeth him to Gaol or to the Juſtice, may pinion him, or otherwiſe make him Sure, ſo that he cannot Eſcape.

Conſtable putting one in the Stocks, &c. Dalt. 453.

If he who makes an Affray do fly into a Houſe, when the Juſtice of Peace cometh to arreſt him, he may in freſh Suit break open the Doors and take him, tho' it be in another County, and in ſuch Caſe a Man's Houſe ſhall be no Refuge for him, becauſe the Prince hath an Intereſt in the Matter. But it muſt be underſtood that the Juſtice in ſuch Caſe can only ſend to a Juſtice of that County, whither he has purſued him, that the Juſtice of the County may commit him till he finds Sureties.

He who makes an Affray, &c. Sharrock v. Hannemer. Owen's Rep. p. 105.

If a Juſtice of Peace commands a Conſtable to keep a Priſoner till next Day, he not having an Opportunity then to examine the Matter, in Falſe Impriſonment brought againſt the Conſtable, the Juſtice's Verbal Order was judged a good Juſtification, tho' it was not alledged what the Cauſe was, which the Juſtice had to impriſon him, which proves the verbal Order of a

Where a Juſtice's verbal Order is good.

Juſtice of Peace to a Conſtable to be good. *Moore's Rep. p.* 408. *pl.* 551. *Broughton* v. *Mulſhoe.*

Juſtice in his Abſence cannot command, &c.

But a Juſtice cannot in his Abſence command any one to arreſt another without a Warrant in Writing. *Mich.* 14 *H.* 7. *b. pl.* 29.

A Battery committed by the Wife, ſhe ſhall be impriſoned, and not the Husband. *Lib. Aſſ.* 22. *Pl.* 87.

One Juſtice of Peace may commit a Man who holds Lands by Force. *Mich.* 21 *H.* 6. *f.* 5. *A. B. pl.* 14.

Suſpicion where no Felony is committed, &c.

Suſpicion only, where no Felony is committed, is no Cauſe to arreſt a Man: But if a Felony has been committed, and one doth ſuſpect *J. S.* to have committed the ſame Felony, then he may arreſt him, and a Juſtice may commit him. *Hill.* 7 *H.* 4. *f.* 35. *pl.* 3. *Trin.* 27 *H.* 8. *f.* 23. *a. pl.* 22. *Hill.* 14 *H.* 8. *f.* 16. *a. pl.* 3.

A. beats B. and wounds him, &c.

A. beats and wounds *B.* in ſuch Manner, that he is in Danger of dying. *C.* arreſted *A.* and impriſoned him till it might be known whether B. were likely to live or die. *A.* brought Falſe Impriſonment againſt *C.* who juſtified, and it was allowed a good Plea in Bar. *Hill.* 38 *Ed.* 3. *f.* 6. *b.* 7. *Paſch.* 10 *H.* 7. 20. *a. pl.* 8.

A Juſtice of Peace's Warrant, &c. Bulſt. 1 p. 156. Brownl. 1. p. 211. Bulſt. 2. p. 335 Rol. Rep. 1. p. 395.

A Juſtice of Peace grants a Warrant; this will juſtify the proper Perſon who arreſts the Party againſt whom it is granted, but not to break open the Doors, unleſs in Caſe of Felony or Treaſon, &c. *Trin.* 9 *Jac.* 1. *Bulſt. Rep.* 1 *pt. p.* 146. *Forſter* v. *Hill. Brownl. Rep. pt.* 1. *p.* 211. *Monzey* v. *Johnſon. Hill.* 12 *Jac.* 1. *Bulſt. Rep.* 2. *p.* 335. *Wilſon* v. *Dodd. Roll. Rep.* 1. *p.* 135. *l.* 15.

One may be impriſon'd, &c. Moore's Rep. 247. Cr. Eliz. p. 78.

To call a Juſtice of Peace Fool when he is in the Execution of his Office, is a Miſdemeanor for which he may be apprehended and impriſoned. *Mich.* 39 *Eliz. Moore's Rep. p.* 247. *pl.* 389. *Cro. Eliz. p.* 78. *pl.* 38. *Simons* v. *Sweet.*

A Conſtable can't juſtify, &c. Sav. Rep. 97.

A Conſtable cannot juſtify impriſoning of one who diſturbs him in doing his Duty, tho' he give him ill Language, or makes an Aſſault upon him, or otherwiſe ill behaves himſelf. *Trin.* 31 *Eliz. Savil's Rep. p.* 97. *pl.* 178.

Stoln Goods, &c. Bridgm. 60.

A. had loſt five Heifers, and he took out a Warrant againſt *B.* and found one of them in his Cuſtody, and was bound over to proſecute, which he did; but *B.* was acquitted, and brought an Action, but Judgment for *A. Bridg. Rep. p.* 60. *Trin.* 14 *Jac.* 1. *Weab* v. *Wells.*

If

If any Perſon brings a Child into a Pariſh, and leaves it there without Keeping or Nouriſhment, a Conſtable may arreſt him, and carry him before a Juſtice of Peace, who is to examine him, and bind him over to be puniſhed, for 'tis a great Offence. *Trin.* 31 *Eliz. Leon.* 1. *pt.* 327. *pl.* 462. *Beale* and *Carter*'s Caſe. *Moore's Rep. p.* 284. *pl.* 36. *Cro. Eliz. p.* 287. *Pop. Rep.* 12. *Owen* 8.

To leave a Child in a Pariſh, &c. 1 Leon. 327. Moore p. 284. Cr. Eliz. 287. Pop. 12. Owen.

A Juſtice of Peace his Warrant will not juſtify a Conſtable in breaking into a Houſe to apprehend any Perſon for a leſs Crime than Felony or Miſpriſion of Felony, *&c. Trin.* 9 *Jac.* 1. *p.* 146. *Forſter* v. *Hill.*

A Juſtice's Warrant, &c. Trin. 9. Jac. 1. Foſter v. Hill.

Arreſt in the Night is good, elſe the Party may eſcape. 9 *Co.* 66.

All that come to the Seſſions for publick Service, or upon Compulſion, upon Complaint and Examination of the Matter by Oath, ſhall be freed from any Arreſt upon Original Proceſs. *Lamb.* 402.

All that come to Seſſions, &c. Lamb. 402.

Arreſt on a *Sunday* on a mean Proceſs, *&c.* void by 29 *Car.* 2. The next Juſtices or Seſſions may adjudge what is fit to be taken for Lodging and other Expences while under Arreſt, before Impriſonment. 22 *&* 23 *Car.* 2.

Arreſt on a Sunday void. 29 Car. 2.

A Man is ſlain, or a Felony committed, and an innocent Man is arreſted for the ſame, he cannot be delivered but by due Courſe of Law. *Lamb.* 233.

An Innocent Man arreſted, &c. Lamb. 233.

See more of Arreſts under Title *Conſtable.*

A Warrant to arreſt a ſuſpected Perſon.

WHereas a Felony hath been lately committed, &c. *wherein* A. B. *of your Pariſh is ſuſpected to be concerned: Theſe are therefore in his Majeſty's Name to Command you forthwith to bring the ſaid* A. B. *before me, or ſome other Juſtice of Peace for this County, to anſwer unto all ſuch Matters as ſhall be objected againſt him by,* &c. *relating to the ſaid Felony; and hereof fail not. Given,* &c.

Artificers.

PErſons contracting with, or endeavouring to perſwade any Artificer in Wool, Iron, Steel, *&c.* to go out of this Kingdom into a Foreign Country

Perſons convicted of enticing Artificers, &c. 5 Geo.

try, and thereof shall be convicted in any of the Courts at *Westminster*, the Assizes or Quarter-Sessions, shall be fined, not exceeding 100*l.* and be imprison'd three Months, and till the Fine is paid.

Artificers going into foreign Parts, &c. 5 Geo. c. 27.

Artificers going out of his Majesty's Dominions to exercise or teach their Trades to Foreigners, not returning within six Months after Warning given by the Ambassador, Envoy, *&c.* where such Artificers are resident, shall be incapable of taking any Legacy, or being an Executor, *&c.* be disabled to hold Lands by Discent, Devise, *&c.* forfeit all their Lands, and be deemed Aliens. Prosecution must be in twelve Months.

Justice on Complaint may grant Warrant, &c. Ibidem.

A Justice of Peace, on Complaint to him that any Person is attempting to draw away any such Artificer, or that any Artificers are contracting or preparing to go out of his Majesty's Dominions, may send his Warrant to bring the Person before him; and if he by Oath or Confession of the Party, be found Guilty, may bind him over with Sureties to the next Assizes or General Quarter-Sessions, where he must give Security not to depart the Realm. Not giving Security in either of the Cases, to be imprison'd.

A Warrant to apprehend an Artificer going to leave the Kingdom.

WHereas Complaint hath been this Day made unto me W. B. *Esq; one of his Majesty's Justices of the Peace for the County aforesaid, that* A. B. *of your Parish hath contracted, or is preparing to go out of his Majesty's Dominions to exercise his Art and Trade of,* &c. *or teach it to Foreigners, contrary to an Act of Parliament made in that Behalf. These are therefore to Command you to apprehend the said* A. B. *and bring him before me or some other Justice of the Peace for this County, to answer the Complaint, and be proceeded against according to Law. Given,* &c.

Assault.

Assault, what it is.

ASsault is derived from the old *Latin* Word *Assultus*, which signifies a Leaping on another, and is, when one unlawfully sets upon the Person of another, offering to beat him, tho' he beats him not, or striking at him, tho' he strikes him not.

Battery

Battery is the wrongful Beating or Wounding of another.

What is Battery. Dalt. 282. Keil. 556.

In Aſſault and Battery, all are Principals and no Acceſſaries.

A Man may juſtify the Striking another to defend his Perſon from being wounded: He may likewiſe juſtify the Beating one in Defence of his Wife or Child, as the Wife may beat one who would aſſault the Husband; a Man may alſo juſtify Beating one who aſſaults his Father or Mother, but not his Servant, he hath his Action. *Black.* 40. A Servant may likewiſe juſtify Striking another in Defence of his Maſter.

In what Caſes Aſſault may be juſtified. Hil. 35 H. 6. f. 50 & 51. a. pl. 15. Paſch. 21 Ed. 4. l. 6. a. pl. 15.

Parents have a natural Power over their Children 'till they come of Age, and 'till then they may chaſtiſe them: And Maſters have a Civil Power over their Servants, Schoolmaſters over their Scholars; Gaolers over their Priſoners; and any Perſon over his Kinſman, being Lunatick, and attempting to do Miſchief.

Parents have a Power over their Children. Paſch. 21 Ed. 4. f. 6. a. pl. 17. 22 Ed. 4 f. 45. a. b. pl. 10.

If any Perſon would by Force wrongfully take away my Goods; whether I have a Property in them, or a bare Poſſeſſion only, Reſiſtance is juſtifiable; as likewiſe, in Caſe another endeavour to put you out of Poſſeſſion of Lands, *&c.* And a Man may beat one in Defence of his Freehold, Farm, Water-courſe or Highway.

Reſiſtance juſtifiable in Defence of Goods. Paſch. 10 Ed 4. f. 6. b. pl. 15.

And when the Life of any one is in Danger by beating or otherwiſe, any Perſon may endeavour to reſiſt, and that by beating him who offereth the Violence. *Dalt.* 206. But if he who is aſſaulted may eſcape with his Life, or without being wounded, it is not lawful for him to beat or wound the Perſon of another.

Mich. 2 H. 6. f. 8. a. pl. 41. Paſch. 32 H. 6. f. 18. b. pl. 20.

If two agree to Play at any Game, and one is Hurt, 'tis no Breach of the Peace, becauſe it was by Conſent. But if, after the Play ended, one will aſſault and beat another for any Wrong conceived in the Play, that is a Breach of the Peace. *Got*, a Barriſter of *Greys Inn*, and a Juſtice of Peace of *Suſſex*, was ſent for to an Alehouſe by *Machel* and *Tully*; when he came thither, *Tully* went out of the Room to prevent any Body's coming to aſſiſt *Got*, whom *Machel* beat ſo much, that he broke his Arm; and for this Battery he and *Tully* were indicted and found guilty, and *Machel* was fined 1000 *l.* and *Tully* 500 *l.* and both committed for a Month without Bail, and to find Sureties for their Good Behaviour, for ſeven Years.

If two agree to Play, &c. Caſe of Got and Machel & al'.

A Con-

Paſch. 21 H. 7. f. 21. a. pl. 5. Aſſaulter is to be fined.

A Conſtable may juſtify his Laying of Hands on any one who is aſſaulting another.

Maker of an Aſſault, Battery, &c. on the Body of another, is to be fined.

Servant, &c. 5 Eliz. c. 4. Cr. 84. a.

Servant or Workman convicted by two Witneſſes before two Juſtices of Peace, of maliciouſly aſſaulting his Maſter, Dame, &c. is to be impriſon'd a Year, and any other corporal Puniſhment, ſaving Life and Member.

And where a Man is aſſaulted, he may bring an Information in the Crown-Office, or have Action at Law of Treſpaſs and Aſſault.

No Aſſault to thruſt one in a great Crowd.

A Warrant againſt a Perſon for Aſſaulting another.

Whereas Complaint is made unto me by A. B. *of*, &c. *that* C. D. *of your Pariſh did lately Aſſault and Beat him the ſaid* A. B. *and gave him ſeveral Wounds in his Head, and other Parts of his Body. Theſe are therefore in his Majeſty's Name, to command you to apprehend the ſaid* C. D. *and to bring him before me or ſome other of his Majeſty's Juſtices of the Peace for this County, to anſwer the Premiſſes, and to be dealt withal according to Law.* Given, &c.

An Indictment for an Aſſault.

Staff. ſſ. JURʼ, &c. quod T. P. de Parochia de H. in Com̃ pred̃ ſcilicet, 30 die Januarii, anno Regni, &c. apud Parochiam pred' in Com' pred' in & ſuper J. O. in pace Dei & dicti Dom̃ Reg̃ adtunc & ibidem exiſten' vi & armis inſultum fecit & ipſum J. O. adtunc & ibidem verberavit vulneravit & male tractavit ita quod de vita ejus deſperabatur & alia enormia ei adtunc & ibidem intulit ad grave damnum ipſius J. O. contra pacem dicti Domini Regis nunc Coronam & dignitatem ſuas.

Aſſize of Billets, &c. See Fuel.
Aſſize of Bread. See Weights, &c.

Aſſizes.

ALL Juſtices of Peace, under the Degree of Peers, are obliged twice in the Year to attend the Judges of Aſſize in their Circuits, under Pain of being fined for their Non-Appearance; and the firſt Day of every Aſſizes, all the Juſtices of Peace are called over, and the Defaulters marked and fined, unleſs excuſed by the ſaid Judges, for Sickneſs, or ſome other extraordinary Cauſe hindering their Attendance at the Aſſizes.

All Juſtices under the Degree of Peers are to attend at the Aſſizes, or be fined.

And whether they attend in Perſon or not, they are obliged to tranſmit to the Aſſizes, all Recognizances, Informations, Examinations, *&c.* which they have taken concerning any Priſoners who are to be tried at the next Aſſizes, that the Judges of Aſſize may proceed thereon; and if they neglect to ſend any of them, or are not preſent themſelves, or their Clerks, to examine and prove the ſame, they will be grievouſly fined, as I have ſeen it often done.

And alſo to tranſmit to the Aſſizes all Recognizances, &c.
1 & 2 Ph. & M. c. 13.

N. B. The Examinations muſt not be on Oath, but muſt be ſigned by the Priſoner and Juſtice, and the Informations muſt be on Oath, and ſign'd by the Witneſſes.

Examination taken by Juſtices, &c.

Attainder and Conviction.

A Man is properly ſaid to be indicted when the Offence is firſt found by the Grand Inqueſt, or other Jury of Inquiry. Conviction is, when the Offender is found guilty by a ſecond or petty Jury, after having pleaded Not guilty, or ſhall confeſs the Offence upon his Trial, or is pronounced outlawed for the ſame at the County-Court.

What is conviction by Law. Dalt. 405.

But by divers Statutes an Offender may be convicted out of Court, either upon the View and Record of the Juſtices of Peace, or by the Confeſſion of the Offender, or upon Examination of Witneſſes before one or more Juſtice of Peace out of Seſſions, or ſometimes upon the Certificate or Preſentment of a Juſtice of Peace in the Seſſions, and ſometimes by Confeſſion or Examination of Witneſſes in Court, without any Verdict taken. *Crompt.* 130, 131.

Conviction by Stat. 5 H. 4. c. 6. 13 H. 4. c. 7. 11 H. 6. c. 11. 3 Jac. 1. c. 4.

What is Attainder. Dalt. 406.

Attainder is, when after Conviction Judgment is given againſt the Offender.

What is forfeited, &c.

After Conviction, or *Fugam fecit* returned by the Coroner, all the Goods, the Corn on the Ground, the Profits of the Fee-Simple Eſtate for a Year and a Day, and the Iſſues of intailed Lands during Life, and all Debts due upon any Securities, are forfeited to the King; and the Party to whom the King ſhall give the ſame, may bring his Action in his own Name to recover them.

When and how the Offender's Goods are to be appraiſed, &c.

At Common Law, on *Fugam fecit* by a Felon returned by the Coroner; or if he did not fly but was indicted, the Sheriff or Coroner might ſeize his Goods before Trial for the Uſe of the King, which ought to be appraiſed: But then after the Appraiſment they ought not to be removed out of his Houſe before Attainder, if the Offender could give Security that they ſhould not be imbezilled; if not, then they were to be delivered to the Neighbours, who ought to keep them during his Impriſonment; and he is to have reaſonable Maintenance out of them 'till Conviction.

Party to recover double the Value, &c. Dalt. 363.

And this is confirmed by Stat. 1 *R.* 2. *c.* 3. and the Party impriſoned ſhall recover double the Value of his Goods ſeiſed by any Officer, or taken out of his Houſe before Conviction.

May ſell his Goods, &c.

But the Offender may ſell his Goods for his Maintenance in Priſon.

In Attainder by Outlawry, if 'tis erroneous, the Party may appear at any Time, and reverſe it by Writ of Error.

5 & 6 Ed. 6. c. 11. takes away Advantage of Error for being beyond Sea.

At Common Law it was an Error in Fact, for the Party outlawed to be beyond Sea at the Time of the Judgment pronounced upon the Exigent; for which the Outlawry might be reverſed in all Caſes. But Stat. 6 *Ed.* 6. takes away this Advantage in Treaſon; only there is a Proviſo, that if the Party ſhall yield himſelf to the Chief Juſtice within a Year and a Day after the Outlawry pronounced, he ſhall be admitted to traverſe the Indictment. Sir *Thomas Armſtrong*, after being taken in *Holland*, and brought over in Cuſtody hither, would have had the Benefit of this Clauſe, but it was denied him.

Attainted of Felony, &c.

One attainted of Felony may be arraigned for Treaſon, committed before or after the Attainder. *Lamb.* 557, 558.

One attainted of Felony may be ſued in an Action of Debt upon Obligation, and Execution ſhall be had. 3 *Cro.* 517.

One

One attainted and pardoned may ſue for a Wrong done before; or purchaſe Land. 3 *Cro.* 516. One attainted of Felony may purchaſe.

One attainted upon an Appeal of Robbery may be arraigned upon an Appeal of Robbery at another Suit. *Lamb.* 558. One attainted may be arraigned, &c.

One attainted of Felony, by ſtanding Mute, may after be arraigned of another Felony. *Lamb.* 558. So may one ſtanding Mute.

One attainted of Felony, cannot after be arraigned for another Felony, ſo long as the firſt is unpardoned, unleſs it be in the Caſes before. *Lamb.* 557.

After the Attainder, the Felon's Grant of Goods or Lands, bindeth all Perſons except the Lord to whom they eſcheat. *Dalt.* 405. After Attainder, Felon's Grant bindeth all Perſons except the Lord, &c.

Rights of Entry (tho' not of Action) given to the King by Attainder for Treaſon: So Conditions perſonal, Choſes in Action, as Statutes, Recognizances, Obligations. 3 *Co.* 3. *a.* After Attainder, &c.

But a Condition or Proviſo inſeparably annexed to the Perſon and Mind of the Party; as of a Proviſo, if he ſhall be minded to revoke certain Uſes, and ſignify his Mind in Writing, *&c.* there it is not in the King by Attainder. 7 *Co.* 13. *a.*

Grant of Wine-Licence taken in another's Name in Truſt, forfeited by Attainder of Felony. *Hob.* 214. Grant of Wine Licence, &c.

A Dignity intailed (the Earldom of *Weſtmorland*) forfeited by Attainder for Treaſon, being an Hereditament at Common Law. 7 *Co.* 34. A Dignity intail'd, forfeited, 7 Co. 34.

So of an Annuity, being of Inheritance. *Ibidem.*

Indictment for ſeizing the Goods of a Felon before Conviction.

Eſſex, ſſ. JURR', &c. quod cum quidam A. B. nuper de H. &c. in Com' pred Labourer capt' fuit pro ſuſpicione Felonie per ipſum perpetrat' (viz.) pro eo quod pred' A. B. Felonice cepit unu' equum de bonis & catallis cujuſdam F. O. apud H. pred' in Com' pred' & quod poſtea predict' A. B. ductus fuit coram K. L. Ar' un' Juſtic' Domini Regis ad pacem, &c. & per ipſum commiſſus fuit Gaole dict' Domini Regis infra Com' pred' p ſuſpicione Felonie pred ſuper quo quidam N. O. Conſtabularius Paroch. de H. pred adtunc & ibidem cepit, &c. de bonis & catallis pred A. B. ſic commiſs' antequam convict' fuit de Felonia pred contra formam Statut', &c.

Badgers.

Badgers.

Who are Badgers. 5 Eliz. c. 12. Drover like Qualifications.

ARE licens'd Buyers, Sellers, or Tranſporters of Butter, Cheeſe, Corn, &c. and they muſt be married Men and Houſholders of thirty Years of Age, licens'd in Seſſions of the County where they have lived three Years, under the Hands and Seals of three Juſtices *Quorum unus*, &c. this Licence is in Force for one Year, and no more, and muſt be entred by the Clerk of the Peace, &c. who for writing it has 12 *d.* and for Entry 12 *d.* and the Perſons to whom granted muſt enter into Recognizance at Seſſions that they will not foreſtall or ingroſs, or do any Thing contrary to the true Meaning of the Statutes made againſt Foreſtallers, Ingroſſers and Regrators; for writing whereof they are to pay 8 *d.* for Entry 4 *d.*

Any Perſon acting as a Badger without Licence, forfeits 5 *l.* one Moiety to the King, and the other to the Proſecutor. King's Moiety to be eſtreated according to the uſual Manner, and Proſecution levied by *Fieri Facias* or *Capias*.

Badger buying Grain, &c.

Purveyor, Badger, &c. bargaining for any Victuals or Grain in the Markets of *Oxford* or *Cambridge*, or within five Miles of them, ſhall forfeit quadruple the Value, &c. and three Months Impriſonment, without Bail, &c. except the Queen is there, or within ſeven Miles. Conviction before two Juſtices of the County, together with Chancellor, Vice-Chancellor, or his Commiſſary.

Badger buying Grain, &c. out of open Fair or Market, &c.

Badgers, &c. buying Grain, &c. out of open Fair or Market to ſell again (unleſs there be ſpecial Words in his Licence to warrant the ſame) forfeit 5 *l.* to be divided as before; Juſtices at their Diſcretion to take Recognizances of Badgers, &c. not to foreſtall, engroſs or put in Practice any Thing contrary to 5 & 6 *Edw.* 6. *c.* 14.

The Inhabitants of *Weſtmorland*, *Cumberland*, *Lancaſter*, *Cheſter*, and *York*, are excepted out of the Statute of 5 *Eliz. c.* 12.

The

The Condition of the Recognizance taken in the Seſſions.

THat he ſhall not foreſtall, regrate or ingroſs, or do any Thing contrary to the true Meaning of the Statutes made againſt Foreſtallers, Regrators and Ingroſſers, or any Thing therein contained.

A Licence for a Badger and Higler.

Eſſex, ſſ. *AT the Gen. Quarter-Seſſions of the Peace held at, &c. for the County aforeſaid, this Day, &c. We* A. B. C. D. E. F. &c. *Eſqrs. Juſtices of the Peace for the ſaid County (one whereof is of the* Quorum) *have licenc'd, and by theſe Preſents do licence and appoint* G. H. *of, &c. to be a common Badger, Carrier, and Buyer and Seller of Corn and Grain in any Market or Fair whatſoever, and the ſame to convert into Meal, and to carry to and vend in the City of* London, *or any other Fair or Market, from Time to Time, and at all Times for and during the Space of one Year from the Date hereof, ſo as he do Uſe and follow the ſaid Buſineſs, according to the true Intent and Meaning of the Statutes in that Caſe made and provided againſt Foreſtallers, Ingroſſers, and Regrators, and not otherwiſe. In Witneſs, &c.*

Licence to a Higler.

LIcence to a Higler, is to licence and allow G. H. *to be a Common Higler, Carrier, Buyer, and Seller of Hens, Chickens, Capons, Eggs, and any other dead Victuals (except ſuch as are prohibited by Law) in any Market whatſoever, for one Year from the Date hereof, provided he do uſe and follow the ſaid Buſineſs and Dealings, according to the Statutes in that Caſe made and provided.*

A Warrant to levy the Forfeiture againſt a Badger for buying and ſelling Corn without Licence.

Eſſex, ſſ. *WHereas* A. B. *of, &c. hath this Day made Oath before us, that* C. D. *of, &c. hath bought Corn and Grain in the Market of, &c. in the County aforeſaid, and the ſame hath ſold again in the Market of, &c. within four Miles of the ſaid Market, &c. where he bought the* 5 Eliz. c. 12.

ſame without being legally licenc'd thereto by the Juſtices of Peace for the ſaid County in their Quarter-Seſſions, as he ought to be, and contrary to the Acts of Parliament in that Caſe made againſt Regrators, whereby the ſaid C. D. *hath forfeited the Sum of* 5 l. *Theſe are therefore in his Majeſty's Name to Command you to levy the ſaid Sum of* 5 l. *forfeited as aforeſaid, upon the Goods and Chattels of the ſaid* C. D. *by Diſtreſs and Sale thereof, rendring the Overplus (if any) to the ſaid* C. D. *And that you do pay the ſame as the Act of Parliament in that Behalf made, directs.* Given, *&c.*

Bail.

Bail, what.

BAIL (from the *French* Word *Bailler*) (*i. e.*) *tradere*, ſignifies the Delivery of one under Arreſt into the Hands of his Sureties for his Appearance again at a Day and Place aſſigned; and the Difference between Bail and Mainprize, is, that Mainperners are only Sureties, but Bail is a Cuſtody, and therefore the Bail may reſeiſe the Priſoner at any Time and Place, or may keep the Criminal as a Priſoner till the Day of Appearance; for the Bail is *Corpus pro Corpore*, and if he eſcape, they muſt render themſelves. *Poph.* 96. *Jenkins* 129. And Juſtices in ſuch Caſe ought to commit the Priſoner in Diſcharge of the Bail, or put him to find new Sureties; and the Juſtices may require new Sureties in caſe of inſufficient Bail. *Co.* 156. *a.* & 157. *a.*

The Difference between Bail and Mainprize.

Stat. Weſt. 1. c. 15. 3 Edw. II. the Rule, &c.

The Statute *Weſtm.* 1. *c.* 15. 3 *Ed.* 1. directs where Bail ſhall be taken, and where not; and this ſeems to be the Rule even to this Day; for the Statute 3 *Hen.* 7. *c.* 3. & 1 & 2 *Ph.* & *M. c.* 13. which gives Juſtices of Peace Power to bail, have Relation to this very Statute, 2 *Inſt.* 190. But the Statute of 1 *R.* 2. *c.* 3. mentioned by ſome of our Modern Authors as being in Force, is repealed and altered by 3 *Hen.* 7. *c.* 3.

Sureties and Sum generally in the Juſtice's Diſcretion.

Where no certain Sum is appointed by Law, there both the Sum and Sureties are left to the Diſcretion of the Juſtice; but if the Crime be Felony, they ought not only to take very ſufficient Perſons for the Parties Appearance, but alſo bind them in a very large Sum.

The uſual Number of Sureties are two, and the uſual Sum under Felonies 40 *l.* at the leaſt.

Juſtices

Juſtices may bail any Priſoner for an Offence committed, of which they are proper and legal Judges, and no others. Juſtices may bail, &c.

And if Juſtices bail any Perſon not bailable by Law, they may be fined by the Juſtices of Gaol-Delivery, or proſecuted at Law for a negligent Eſcape. And if Bail be refuſed where the Perſon is bailable by Law, it is not only a Miſdemeanor and fineable, but alſo an Action lies againſt the Juſtice. *Weſtm.* 1. *c.* 15. *H. P. C.* 97. *Style* 182. The Juſtices may examine the Sureties upon Oath.

Taking ſlender Bail is likewiſe fineable.

If a Perſon be brought before a Juſtice, and it appears that no Felony is committed, he may diſcharge him; but if a Felony be committed, tho' it does not appear that the Party accuſed is Guilty, yet he cannot diſcharge him, but muſt commit or bail him. *H. P. C.* 98. Where no Felony is committed, &c.

In ſhort, Bailing by a Juſtice of Peace is a nice and critical Point, and therefore not much uſed by Juſtices of Peace, who ought to be very cautious in it, eſpecially in Felonies or higher Crimes. I ſhall therefore omit inſerting in what Caſes, as Treaſons, *&c.* Bail is taken away by Statute; and alſo in what ſmall Crimes Bail is not to be taken, but an immediate corporal Puniſhment to be inflicted by Commitment, ſince the other Chapters in this Book have and will ſufficiently ſhew it, and the Crimes not mentioned to be bailed, will ſpeak for themſelves. I ſhall therefore only ſet forth in what Caſes Bail is allow'd by Law. Juſtices ought to be very cautious how they bail Priſoners.

Acceſſaries in Felony, before and after the Fact, may be bailed before the Principal is convict, but after the Principal is attainted they ſhould not be bailed. Who are bailable by the Juſtices.

One taken and indicted for a ſlight Suſpicion of Felony, may be bailed. *Lamb.* 335. *F. N. B.* 249, 250, 251.

A Murderer indicted at the King's Suit, and acquitted within the Year and Day, ſhall be either committed to Priſon or bailed until the Year and Day be paſſed, that the Appellant may appeal within the Time. 3 *H.* 7. and *Fitz.* 151. *G.* Murderer acquitted bailed for a Year and a Day.

One convict of Felony, and remaining in Priſon, obtains the King's Pardon, the Juſtices of Gaol-Delivery may bail him, that he may come in and plead his Pardon at the next Gaol-Delivery. He is bailed if he has the King's Pardon.

If *J.* be Acceſſary to two, and but one Principal is attainted, *J.* ſhall not be bailed.

If the Principal die in Priſon or be attainted of another Felony, the Acceſſary is bailable. *Fitz. Coron.* 378. *Bro. Mainprize* 91.

Perſons indicted of any Treſpaſs, not concerning Life or Member are bailable. *W.* 1. *c.* 15.

A Perſon impriſon'd by Proceſs of Seſſions, is bailable by two Juſtices (*Quorum unus*) out of Seſſions. *Lamb.* 337.

See the excellent Statute made 13 *Car.* 2. *c.* 2. in Favour of the Liberty of the Subject, appointing how and in what Caſes, when and by whom Priſoners ſhall be bailed and diſcharged; but this does not directly concern the Juſtices of Peace.

No Perſon arreſted for Suſpicion of Felony, ſhall be bail'd but in Seſſions or two Juſtices.

No Perſon arreſted for Manſlaughter or Felony, or Suſpicion thereof (being bailable by Law) ſhall be Let to Bail or Mainprize by any Juſtice of Peace, but in open Seſſions, or by two Juſtices of Peace at leaſt (*Quorum unus*) and both to be preſent together at the Time of the ſaid Bailment; which Bailment the ſaid Juſtices ſhall certify in Writing, ſubſcribed with their Hands at the next Gaol-Delivery.

What to be done before they bail him.

Alſo before the Bailment of ſuch Priſoner, the ſame Juſtices, or one of them, ſhall take the Examination of the Priſoner, and Information of them that bring him touching the Fact and Circumſtances thereof, which ſhall be put in Writing before they make the Bailment: Which Examination, Information and Bailment they ſhall certify at the next Gaol-Delivery. 1 & 2 and 2 & 3 *Ph. & M. c.* 13.

Cauſe of Commitment to be ſpecified in the Mittimus.

The Juſtices of Peace which ſhall ſend any Criminal to Gaol, ought in their *Mittimus* to ſhew the Cauſe of the Commitment, to the End it may appear, whether ſuch Priſoner be bailable or no.

A Criminal is obliged to offer Bail, otherwiſe the Juſtice may commit him.

Where Judges perſonally commit, &c.

If the Lord Chancellor or Lord Keeper, Judges of *K. B.* or *C. B.* or Juſtices of Aſſize commit any, they are not bailable by the Juſtices of Peace.

In Treaſon, neither Principal nor Acceſſary are bailable; and generally in all Caſes where Impriſonment is inflicted as a Puniſhment, and not only as a Means to keep in Durance, or where the Juſtices have no Cognizance of the Cauſe, they can't bail.

8 Eliz. *c.* 2. Perſons procuring one to be arreſted in another's Name, not bailable.

If any Perſon ſhall procure one to be arreſted in another Man's Name, he not knowing thereof, or

without

without his Conſent; ſuch Offender being convicted thereof, ſhall ſuffer ſix Months Impriſonment without Bail, and before his Delivery, pay to the Party ſo arreſted treble Coſts, Damages and Expences; and alſo pay unto the Perſon, in whoſe Name he procureth ſuch Arreſt, ten Pounds for every ſuch Offence. 8 *El.* *c.* 2.

In Caſe of Murder, Juſtices of Peace can't bail, but *K. B.* may, but do not in Diſcretion, for Stat. *W.* 1. extends not to that Court. *Cr.* 99. *H. P. C. B. R.* can bail after a Coroner's Inqueſt, but not after a Grand Jury.

Indictment removed by *Certiorari*, and no Bail put in above, the Court below may proceed (without a *Procedendo.*) *Style* 321.

If Proceedings be removed by *Certiorari*, and after ſent back by a *Procedendo*, yet the Bail is for ever diſcharged. *Co. Bail and Mainprize f.* 26.

When one is wounded and in peril of Death, the Offender is not to be bail'd quouſque.

If a Man be wounded in Peril of Death, the Party ſo wounding ſhall be arreſted and not be bailed, till perfect Knowledge be had whether he ſo hurt ſhall live or die. *Weſtm.* 1. 3 *Ed.* 1. *c.* 15. 3 *Hen.* 7. *ca.* 1. *Co. Inſt.* 2. 186. *Rol. Re. Mich.* 13 *Jac.* 1. *p.* 268. *pl.* 43. *B. R. Poyn.*'s Caſe, *Latch. pl.* 2. *Herbert* and *Vaughan*'s Caſe, *Poph. Rep.* 153.

Where a Man kill'd another in his own Defence, and he was refuſed to be bail'd. 25 *Ed.* 3. 44 *Ed.* 3. 'Tis ſaid to be in the Judges Diſcretion.

No Bail in B R. on Indictment for Murder.

Sir *Nich. Poyne* and his Son were indicted for Murder, and committed to the *Marſhalſea* without Bail or Mainprize. The King's Bench was moved to bail them, but it was refus'd; and *Coke* Ch. Juſtice declared, That for the Death of a Man, he would not bail any one. *Bulſt. p.* 113. *Mich.* 13 *Jac.* 1. 1 *Rol. p.* 268. *pl.* 43. *S. C.* Tho' the Judges may bail in Murder, if they ſee Cauſe, but not the Juſtices of Peace. *Mich.* 21 *Edw.* 4. *f.* 70. *b.* 71. *pl.* 55. *Wingfeild*'s Caſe.

Two Juſtices ought not to bail any before they are well ſatisfied they are bailable.

If one committed by one Juſtice of Peace be bail'd by two other Juſtices, not knowing of any Matter why he ought not to be bail'd, theſe Juſtices ought to be fined by the Statute of 1 & 2 *Ph.* & *M. c.* 13. for they offend if they bail him, who by the Statute of *Weſtm.* 1. *c.* 15. is not bailable; and therefore they at their Peril ought ſo to inform themſelves before they take Bail of the Matter, that they may be well ſatisfied that ſuch an one is bailable by Law. And therefore they are to obſerve well the Statutes of

Weſtm. 1. *c.* 15. who is, and who is not bailable by Law. And this was the Opinion of the whole twelve Judges. *Trin.* 37 *Eliz. Poph. Rep. p.* 96. *pl.* 1.

Where the Party wounded is in Danger of Death, he who wounded him is not bailable. *Mich.* 22 *Ja.* 1. *Poph. Rep. p.* 153. *Lewis* verſus *Jefferys.*

Bail for Felony and Murder, may keep the Criminal as a Priſoner till, &c. *Poph.* 96. *Jenk.* 129.

He that knowingly receives one outlawed is not bailable. *Blac.* 42.

Committed by the Privy Council, not bailable.

A Man who is committed by the Privy Council is not bailable; ſo if by the King's perſonal Command. 1 *And.* 298. but *vid. Hawk. P. C. Vol.* 2. *Book* 2. *c.* 15. *Sect.* 66. 7, 8, 9, 70, 71. & *Stat.* 16 *Car.* 1. *c.* 10. *pl.* 8. all very material to this Point. *Mich.* 33 *H.* 6. *p.* 28. *b. Hill.* 12 *Ja.* 1. 1 *Roll. Rep.* 134. *Brower's* Caſe. 1 *Roll. Rep.* 219. Sir *Samuel Salkingſtone's* Caſe. *And. Rep.* 1. *pt.* 297, 298. by all the Judges of *England.*

A common Recognizance for Bail.

Eſſex, ſſ. MEmorand' quod 1 die Aprilis anno reg' &c. A. B. de, &c. E. D. & J. F. de, &c. perſonaliter venerunt coram me E. F. uno Juſticiariorum dicti Dom' Regis ad pacem ſuam in Com' præd' conſervand' aſſign' & recognoverunt ſe debere eidm Dom' Reg' modo & forma ſequen', viz. præd' A. B. viginti libris legalis monet' Magn' Br' & Uterq; præd' E. & J. decem libris conſimilis monet' de ſeparalibus bonis & catallis terris & tenementis ſuis ſeparabiliter fieri & levari ad opus & uſum dicti Domini Regis heredum & ſucceſſorum ſuorum ſi præd' A. B. defalt' fecerit in performatione Conditionis infraſcript'. Anno Dom' may be omitted, if the Year of the King be expreſſed.

A Recognizance where Bail is taken for a Felon.

Eſſex, ſſ. MEmorand' quod 8 die Aprilis anno regni, &c. venerunt coram nobis J. S. & K. L. duobus Juſtic' dicti Dom' Regis ad pacem in Com' præd' conſervand' aſſign' Necnon, &c. (Quorum unus) apud L. in Com' præd' T. M. & N. O. de, &c. in Com' præd' Gent' & ceperunt in ball'um uſque ad proximam Gaole deliberation' in dicto Com' tenend' quendam N. K. de &c. Labourer captum & detentum

* 2

* p̄o ſuſpicione cujuſdam felonie per ipſum ut dicitur perpetrat' & aſſumpſerunt ſuper ſe ſcil't p̄ed' T. M. & N. O. ſeparatim ſubpena 60 l. bone & legalis monet' Magn' Brit' & p̄ed' N. K. aſſumpſit p̄o ſeipſo in Centum lib̄is ſimilis monet' de bonis & catallis terris & tenementis eo̅rum & cujuſlibet eo̅rum ad opus dicti Domini Regis hered' & ſucceſſo̅rum ſuo̅rum levand' ſi p̄efat' N. K. ad p̄oximam Gaole deliberation' Com' p̄ed' non perſonaliter comparebit co̅ram Juſtic' dicti Dni Reg' ad dictam Gaole deliberation' aſſign' ad ſtandum recte de felonia p̄ed' & ad reſpondend' dict' Dom' Regi tunc & ibidem de et ſuper omnibus que illi objicientur Dat' ſub ſigillis noſtris.

* If in Priſon, ſay, In Priſona.

THE Condition of this Recognizance is ſuch, That if the within bound *N. K.* do perſonally appear before his Majeſty's Juſtices, aſſigned to keep the Peace in the within named County of *E.* at the next General Seſſions of the Peace to be holden for the ſaid County at *C.* in the County aforeſaid (or before his Majeſty's Juſtices of Gaol-Delivery at the next general Gaol-Delivery to be holden for the ſaid County of *E.*) then and there to anſwer our ſaid Sovereign Lord the King, for and concerning the felonious Taking and Stealing of, *&c.* (If charged but with Suſpicion of Felony, then ſay the Suſpicion of his felonious, *&c.* whereof he ſtands charg'd) wherewith he ſtands charg'd before, (naming the Juſtice that committed him, *&c.*) and to do and receive, *&c.* and not to depart the Court without Licence, then this Recognizance to be void, *&c.*

Note, That it is Felony to acknowledge a Recognizance or Bail in the Name of a Perſon not knowing thereof, or conſenting thereto. 21 *Jac.* 1. *c.* 26. *Cr. Eliz.* 531. 4 & 5 *W.* & *M.* *c.* 4.

'Tis Felony to acknowledge a Recognizance, &c. falſly.

Bailiff. See **Extortion.**

Baker. See **Weights and Meaſures.**

Bankrupt.

BAnkrupt Fraudulently conveying his Lands or Goods, or any Eſtate to the Value of 20 *l.* to delay his Creditors, and not diſcovering or delivering a Particular thereof, if he can, to the Commiſſioners, or ſhew ſome accidental Cauſe by which he is diſabled to pay his Debts, ſhall be indicted at the Seſſions of that County where he became Bankrupt; and upon Conviction ſhall be ſet in the Pillory two Hours, and have one of his Ears nailed to it, and cut off. 21 *Ja.* 1. *c.* 19.

By a Stat. made 5 *Geo.* 2. It is enacted, that if any Perſon or Perſons, who ſince the 14th of *May*, 1729. or who ſhall hereafter during the Continuance of this Act, hath, or have been, or ſhall be declared to be a Bankrupt or Bankupts, ſhall not within forty-two Days after Notice thereof in Writing, to be left at the uſual Place of Abode of ſuch Perſon or Perſons, or perſonal Notice if in Priſon, and Notice given in the *London Gazette*, that ſuch Commiſſion, or Commiſſions is, are, or have been iſſued, and of the Time and Place of a Meeting of the Commiſſioners therein named, or the major Part of them, ſurrender themſelves to the ſaid Commiſſioners, and ſign or ſubſcribe ſuch Surrender, and ſubmit to be examined from time to time upon Oath, or being of the People called Quakers, upon the ſolemn Affirmation by Law appointed for ſuch People, and in all Things conform to the ſeveral Statutes now in Force concerning Bankrupts; and alſo upon their Examination, fully and truly diſcover all their Effects and Eſtate Real and Perſonal, and how, and to whom, and for what Conſideration, and when they diſpoſed of their ſaid Eſtate, (and all Books, Papers, and Writings relating thereunto) or to which they were any way entitled, or any in Truſt for them, or to their Uſe at any time before or ſince the ſaid Commiſſion, or whereby they or their Family may have any Advantage whatſoever; and

alſo upon ſuch Examination, deliver up to the ſaid Commiſſioners, all their Effects, and all Books, Papers, and Writings relating thereunto, as ſhall be in their Poſſeſſion or Power, (neceſſary wearing Apparel excepted) then they in caſe of any Default, or wilful Omiſſion, in not ſurrendring and ſubmitting to be examined as aforeſaid, or if they ſhall remove, conceal or embezil, any Part of their Eſtate or Effects to the Value of twenty Pounds, or any Books of Account, Papers, or Writings relating thereto, with an Intent to defraud their Creditors, (and being thereof lawfully convicted by Indictment or Information) ſhall be adjudged guilty of Felony without benefit of Clergy, or of any Statute in Relation to Felons, and their Goods and Eſtate ſhall go and be divided among their Creditors, ſeeking Relief under ſuch Commiſſion.

And it is further enacted, that upon Certificate under the Hands and Seals of the ſaid Commiſſioners, or the major Part of them, that ſuch Commiſſion is iſſued, and ſuch Perſon or Perſons become Bankrupt, it ſhall be lawful for any of the Judges, or any Juſtice of the Peace, within *England*, *Wales*, or Town of *Berwick upon Tweed*, on Application to them for that Purpoſe made, to grant their Warrant under Hand and Seal, for the apprehending any ſuch Perſon, and to commit them to the common Gaol of the County where they ſhall be ſo apprehended, there to remain until they are removed by Warrant under the Hands and Seals of the ſaid Commiſſioners, or the major Part of them.

This Act is to be in Force for three Years from the 24th of *June*, 1752. and from thence to the End of the then next Seſſion of Parliament, and no longer.

Bargain and Sale. See Inrolment.

Bark of Trees. See Leather.

Barretry.

Barretor, who.

A Common Barretor is he who is either a common Mover, Stirrer up, or Maintainer of Suits in Law, in any Court, or Quarrels in the Country, or any common Disturber of the Peace.

And as he may be bound to his Good Behaviour; so he may be indicted at the Assizes or Sessions, and fined. 8 *Co.* 36, 37.

One or two Causes make not a Barretor, but it must be a common Course and Habit to make him punishable.

If an Indictment for Barretry concludes *contra formam Statuti*, 'tis not void, tho' there is no Statute which makes it an Offence; for the Act 34 *Edw.* 3. *c.* 1. gives the Justices of Peace Power to punish a Barretor, but doth not create the Offence, for it was an Offence at Common Law.

Barrector instead of Barrectator.

An Indictment was *communis Barrector*, where it should have been *Barrectator*, and quash'd for that. 20 *Jac.* 1. *Alport*'s Case.

Necnon ad diversa, &c. left out in the Indictment and quash'd.

This Offence being mix'd, the Justices cannot punish it by Virtue of their Commission in general, but in respect of the Clause therein to punish Felonies, &c. And therefore upon a *Certiorari*, such an Indictment being certified *capta coram, &c. Justic' Dom' Regis ad pacem* but (*Necnon ad diversa, &c.*) being left out, for that Cause the Indictment was quash'd. 2 *Roll. Rep.* 151.

Feme Covert not indictable for Barretry.

A Feme Covert can't be guilty of Barretry. 2 *Roll. Rep.* 37. Suing in another Man's Name unknown to him, is a Sort of Barretry; so is lending small Sums on several Bonds, and keeping the Bonds and putting them in Suit after Money is paid. *Dalt.* 39.

T. was

T. was indicted at the Seſſions as a Promoter of Suits & *communis vicinorum oppreſſor*, &c. and Judgment given againſt him at Seſſions, and he was fined 200 *l.* He brought a Writ of Error, and becauſe the Word *Barrectator* was not uſed in the Indictment, which the Court ſaid was a Word of Art in this Caſe, the Judgment was reverſed; but the Court bound him to his Good Behaviour, and directed a new Indictment to be brought with the Word *Barrectator*. *Paſch.* 18 *Car.* 2. *B. R.* 1 *Siderfin* 282. *pl.* 13. *The King* againſt *Hardwick*. *Mich.* 22 *Car.* 2. *B R.* 1 *Vent. Rep. p.* 104. *The King* againſt *Ledgingham*. *S. P.* 1 *Mod. Rep. p.* 71. *S. C. Levinz. Rep.* 1 *pt. p.* 239. *S. C. Raymond p.* 205. *S. C. Communis Oppreſſor* is too general: Tho' Mr. *Nelſon* tells us it hath lately been ruled otherwiſe; for an Indictment againſt the Defendant, for that he is *Quotidianus perturbator pacis*, was not quaſhed (as he ſays) tho' the ſame Exception was taken to it, *viz.* The Omiſſion of the Word *Barrectator*. *Hill.* 8 *Will. B. R. Rex* v. *Gregory*. *Nelſon p.* 76.

Barrectator left out in the Indictment and quaſh'd. 2 Keeble p. 24. pl. 51. & p. 42. pl. 84. S. C. 1 Mod. p. 228.

It was formerly held, That it was not neceſſary to ſet forth in what Place the Offender was a Barretor; becauſe a Man who is guilty of this Offence is a Common Barretor every where: But of late 'tis ruled otherwiſe; for if it is traverſed, and no Place alledged in the Indictment, there cannot be any *Venire facias* awarded to try the Fact.

W. T. was indicted at *Oxford* Seſſions as a common Barretor; and the Indictment was quaſh'd, becauſe no time was alledg'd when he was a common Barretor, and ſtirred up Strifes, though the Indictment was, he is a common Barretor. *Benloes's Rep.* 133. *Walter Thomas's* Caſe

N. B. The Words *contra pacem* muſt not be omitted in the Indictment.

An Indictment for a Barretor.

Eſſex, ſſ. JURR', &c. quod A. B. de, &c. in Com' prædō tali die & anno, &c. apud, &c. in Com' prædō fuit & adhuc eſt communis Barrectatoꝛ & aſſiduus perturbatoꝛ pacis dicti Dom' Regis necnon die anno & loco ſuprædicto fuit & adhuc eſt communis ac turbulentus calumniatoꝛ conviciatoꝛ pugnatoꝛ & litium inter vicinos ſuos ſeminatoꝛ adeo ut diverſas lites & jurgia adtunc & ibidem & alibi in

in Com' pred inter dicti Domini Regis ſubditos movit & procurabit in magnu' contemptu' Dom' Regis & in malu' exemplum aliorum delinquentium ac contra pacem dict' Dom' Regis Coron', &c.

This Indictment is general, and 'tis almoſt impoſſible to make any Defence to it, without a Rule of Court to help the Defendant, *viz.* That the Proſecutor ſhall give him Notice, ſome Time before the Trial, what Suits he intends to give in Evidence; for otherwiſe he cannot be prepared to defend himſelf againſt that general Allegation, *viz.* *Diverſas lites movet.* 5 *Mod.* 18.

Baſtardy.

Who are Baſtards.

A Baſtard is one born out of lawful Wedlock; as if a Man marry a ſecond Wife, the firſt ſtill living, and the ſecond Wife have Iſſue, that Iſſue is a Baſtard: Children which a Woman has before a Divorce *a vinculo matrimonii*, or after a Separation by Divorce *a menſa & thoro* are likewiſe Baſtards, unleſs it can be proved that the Husband had Acceſs to her; but if a Man marry a Woman, big with Child by another who was not her Husband, the Child in ſuch Caſe is no Baſtard; and if a Woman part from her Husband by Conſent, or elope with a Stranger, and hath a Child by him, if the Husband be within the four Seas, and under no apparent Impoſſibility of Procreation, ſuch Child is Legitimate and ſhall inherit. *Roll. Abridg.* 358, *&c.*

Baſtardy an Offence both againſt the Common Law and the Spiritual Law.

Baſtardy, is an Offence againſt both the Common Law, and the Law Spiritual, and may be puniſhed in both Courts; and at Common Law, the Perſon offending may be bound to the good Behaviour by one Juſtice, as he is *conſervator pacis.* But the Woman muſt be firſt examin'd, and the Fact proved by her Oath, before the Juſtice ought to ſend his Warrant to apprehend the reputed Father. 18 *Eliz.*

Reputed Father muſt enter into Recognizance, or be committed.

When the Perſon is before the Juſtice, he muſt enter into a Recognizance, with ſufficient Sureties, for his Appearance at the next Seſſions, when he may be continued upon the Recognizance until the Woman is delivered of the Child: And if he refuſe to enter into ſuch Recogniſance, he may be committed.

When

When the Child is born, the two neareſt Juſtices to the Place where born (*Quorum unus*) are to examine the Matter, by ſending Warrants to the reputed Father and Mother, and ſuch Witneſſes as they ſhall think neceſſary, and when the Examination is over, the two Juſtices are to make their Order for the Puniſhment of the Father and Mother, and the Relief of the Pariſh from the Baſtard; wherein they may order the Parents to pay Money Weekly for the Maintenance of the Child. 18 *Eliz. c.* 3.

Neither Seſſions nor Aſſizes can meddle touching Baſtardy, but upon Appeal, by 18 Eliz. 2 Bulſt. 293.

If the two Juſtices cannot agree in making their Order, then it may be referred to the next Seſſions to be examin'd; and it may be again heard before the Juſtices, with the Direction of the Court.

'Tis neceſſary in the Order of the two Juſtices to ſet forth, that the putative Father of the Baſtard was ſummoned to appear, and for what Cauſe.

The putative Father may be charged to pay a Sum in Groſs. *The King* verſus *Glegg*. *Mich.* 7. *G.* 1.

In the making a good Order, the following Things are to be obſerved.

Jones 330. 1 Mod. 287. Styl. 475. But now by 3 Car. 1. c. 4. the Juſtices in Seſſions have Power originally to make an Order therein. Dalt. c. 11. p. 40.

That it be made by two Juſtices (*Quorum unus*;) that ſuch Juſtices do reſide neareſt the Pariſh to be relieved; that it be made at a private Meeting, and not at Seſſions, that it be expreſs'd to be made concerning a Baſtard likely to be, or that is chargeable to the Pariſh; for the putative Father to provide for it ſo long as it ſhall be Chargeable to the Pariſh. 1 *Mod.* 20. The Place of Birth muſt be ſet forth, to prove the Juſtices Juriſdiction, and it muſt appear to be Born in the Pariſh to which Relief is ordered; it muſt directly affirm who is the reputed Father; and it muſt be made for the Relief of the Pariſh in part, or in all, and to relieve the Child by a Weekly Maintenance. *Style* 154, 368. *Vent.* 37. *Syd.* 363. 1 *Syd.* 222.

They have the ſame Authority given them as was given the two Juſtices by 18 Eliz. c. 3.

The putative Father may Appeal to the next Seſſions if he ſee Cauſe, and upon the Appeal the Seſſions are either to affirm or quaſh the Order made by the two Juſtices, for they can't make a new one; neither can any other Juſtices, or Seſſions, make a new one after Reverſal, and the Party charged by ſuch Reverſal is acquitted. 2 *Bulſt.* 341. 1 *Vent.* 59. *Mich.* 3 *Jac.* 1. B. R. *Hamond's* Caſe. *Mich.* 6. *Car.* 1. B. R. *Smith's* Caſe.

It was doubted whether the two Juſtices could order a Sum in groſs, but it is now adjudg'd they may. 1 Vent. 336. Mich. 12 Ann.

On

On putative Father's giving Security to the Pariſh, Seſſions have no further Power.

On ſerving the Order, the Father may give Security to the Church-Wardens, &c. to indemnify the Pariſh from all Charges and Expences ariſing by reaſon of the Birth or Maintenance, &c. of the Child; and when ſuch Security is given the Seſſions have no further Power, for the Bond muſt be put in Suit if the Condition be not perform'd: But if the reputed Father refuſe to give ſuch Security, or to comply with the Order, and will bring an Appeal againſt it at the next Seſſions, then he muſt enter into a Recogniſance for his Appearance at the next Seſſions to have the Matter determined. And on his refuſing to give Security as aforeſaid, and to enter into ſuch Recogniſance for his Appearance as aforeſaid, the two Juſtices, who made the Order may commit him, without Bail or Mainprize. 18 *Eliz.* *c.* 32. *Bulſt.* 341, 342.

If he refuſe to enter into Recognizance, the Juſtices may commit him.

Or inflict a Corporal Puniſhment.

The two Juſtices may inflict a Corporal Puniſhment upon the reputed Father, by Virtue of Stat. 18 *Eliz.* But this is very rarely done, unleſs he is ſo very Poor, as not to be able to indemnify the Pariſh.

May commit the Mother to the Houſe of Correction.

The Juſtices may commit to the Houſe of Correction Women, who have Baſtards likely to be chargeable to the Pariſh, there to be puniſhed and ſet on Work (but not until delivered, and the Child alive) for a Year, by Stat. 7 *Jac.* 1. *c.* 4. But if the Woman will diſcharge the Pariſh ſhe may not be puniſhed by this Act, though by 18 *Eliz.* ſhe may be puniſhed by Whipping, as the reputed Father may be.

If Mother expoſe the Child abroad, 'tis Murder.

If the Father of a Baſtard dies poor, the Mother muſt provide for the Child, if able; but if not, the Town where ſhe was laſt ſettled. And if a Harlot will take the Child whereof ſhe is delivered, and ſuffer it to lie abroad, whereby Vermin deſtroy it, this is Murder. 18 *Eliz.* *c.* 3. 2 *Bulſt.* 250. 21 *Jac.* 1. *c.* 27. *Crompton* 24. 7 *Jac.* *c.* 6.

Church Wardens may ſeize Goods of Father and Mother towards the Child's Maintenance.

Where a Baſtard-Child is born it is a Pariſhioner, and the Church-Wardens and Overſeers of the Poor of the Pariſh may ſeize Goods, and receive Rents of the Lands of the reputed Father and Mother, ſufficient to diſcharge the Pariſh; but then it muſt be by Order of two Juſtices, and the Order muſt be confirm'd in Seſſions, 14 *Car.* 2. *c.* 12. And in Caſe of other poor Children left on the Pariſh, there is the ſame Power of ſeizing Lands and Goods, &c. by Stat. 5 *Geo.*

A Baſtard of one able to keep it, not within 18 Eliz.

A Baſtard of a Perſon able and willing to keep it, and not likely to become chargeable to the Pariſh, is not within the Stat. 18 *Eliz.* *Cro. Car.* 436

And

And an Indictment lies for Conſpiring to charge one with a Baſtard-Child, for a Man is thereby diſgrac'd. 1 *Vent.* 305. 1 *Syd.* 68.

Order of Seſſions quaſh'd, where.

A Motion was made at the Quarter-Seſſions to quaſh an Order made, that one ſhould keep his reputed Child, becauſe he had kept him heretofore. But it not appearing by the Order, either that he was his Baſtard, or his lawfully begotten Child, the Order was quaſh'd. *Styl.* 154.

A Man once adjudg'd to be the reputed Father by the Seſſions, can't be excus'd elſewhere.

A Man once adjudg'd by Juſtices of the Peace in the Seſſions, to be the reputed Father of a Baſtard-Child, cannot be excus'd in the Spiritual Court, or elſewhere, by reaſon 'tis by Authority of the Statute. *Cro. Jac.* 624. *Webb* verſ. *Cook.*

A Child removed by an illegal Order, which is after revers'd; muſt go back to the firſt Pariſh.

A Woman big with Child, was by an Order of two Juſtices removed from one Pariſh to another, and there ſhe was brought to Bed, the Pariſh to which ſhe was removed appeal'd at the next Seſſions, and the Order was revers'd: Afterwards an Order was obtained from two Juſtices to ſend the Child back: That Pariſh appeal'd; but the Order was confirm'd. At laſt it was remov'd into *B. R.* and *Holt* Chief Juſtice gave his Opinion, that the Birth, at the laſt Pariſh, did not ſettle the Child there, by reaſon it was under an illegal Order, which Order being revers'd, the Matter is no more than that they procured the Woman to go thither. *Corſham* Pariſh againſt *Weſtbury*. *Trin.* 3 *Ann. Salk.* 121, 532.

If by Practice and Deſign a Child be born in a Pariſh, the Pariſh where the Practice was, ſhall keep the Child. 2 *Bulſt.* 341.

A Woman Offending a ſecond Time muſt be ſent to the Houſe of Correction, and find Sureties.

A Woman offending the ſecond Time ſhall be ſent to the Houſe of Correction, and alſo find Sureties for her good Behaviour; but ſhe muſt be committed by two Juſtices, and muſt have been convicted of her former Offence, and the Child remain in the Town where it was Born, unleſs it ſucks. 18 *Eliz. c.* 3. 7 *Jac.* 1. *c.* 4. for they cannot proceed upon the Stat. 7 *Jac.* 1. *c.* 4. againſt a Woman that had a Baſtard, for the ſecond Offence, unleſs ſhe be puniſh'd for the firſt Offence. 2 *Bulſt.* 349.

A Child born 9 Months and 9 Days after Father's Death no Baſtard.

A Child born nine Months and nine Days, after the Death of her Father, no Baſtard. 1 *Rol.* 358. *Noy* 142. 2 *Cro.* 541.

Yet *Co. L.* 123. ſays, that a Child born Eleven Days after Forty Weeks after it's Father's Death, ſhall not be judged a lawful Child; and ſo it ſeems of a Child born above Forty Weeks after a Woman has

has ſwore a Man had carnal Knowledge of her. *Dalt.* 41.

Iſſue can't be Baſtards after Parents Death.

If there be an unlawful Marriage, as between Brother and Siſter, and they have Iſſue, and either of them dieth before any Divorce had between them, the Iſſue cannot be Baſtards. 1 *Brown.* 42. 21 *Ed.* 3, 31.

Woman's Oath in Writing ſufficient to iſſue a Warrant.

The Examination of the Woman on Oath, put in Writing by the Juſtice, is a ſufficient Conviction to iſſue a Warrant to apprehend the reputed Father, and oblige him to give Security, *&c.* 18 *Eliz. cap.* 3.

A. was ordered by two Juſtices to keep a Baſtard-Child; from which Order he appeal'd to the Quarter-Seſſions, where the Order was repeal'd, and he diſcharged. Afterwards, at another Quarter-Seſſions it was ordered, That he ſhould be the reputed Father, and ſhould keep the Child, and if he would not, he ſhould be committed, which he was accordingly; all which Matter was returned into B. *R.* and the whole Court were of Opinion, that the Order of the firſt Seſſions was concluſive, and the Order of the laſt Seſſions was meerly void. And it was held, that the Stat. 3 *Car.* 1. *c.* 4. doth not aid in this Caſe, for that Statute is, that if the two next Juſtices make not Proviſion for the Baſtard-Child, the Juſtices at the Quarter-Seſſions ſhall ſettle an Order for the keeping of the Baſtard, as the two next Juſtices ought; but it doth not give more Power or Authority to one Seſſions to alter what was ordered in a former Seſſions. *Hill.* 9. *Car.* 1. *Cr. Car. p.* 341, & 351. *Pridgeon's* Caſe, *Jones's* Reports, *p.* 330. the very ſame Point in 13 *Car.* 1. *Bulſt.* 2. Part 355. *Wood* of *Beckford's* Caſe, 2 *Syd.* 29. 1 *Vent.* 59. 1 *Keeb.* 546. 2d *K.* 604.

The Subſtance of what is enacted by 3 Car. 1. c. 4.

Seſſions may now make an Original Order in Baſtardy by 3 Car. 1. c. 4.

Paſch. 13 *Car.* 1. It was reſolved by the whole Court, firſt, that before the Statute 3 *Car.* 1. *c.* 4. the Juſtices at the Seſſions had no Authority to meddle in the Caſe of Baſtardy, 'till the two next Juſtices, according to the Stat. 18 *Eliz. c.* 3. had made an Order therein. Secondly, that by the Statute 3 *Car.* 1. *c.* 4 the Juſtices at the Seſſions have Power and Authority originally to make an Order in Caſe of Baſtardy.

An Order for keeping a Baſtard-Child was quaſh'd, becauſe the Order did not direct how long the Party ſhould keep the Child. *Mich.* 24 *Car.* 1. B. *R.* *Styl.* 154.

So an Order for paying ſo much Weekly to a Pariſh, towards keeping of a Baſtard-Child, was quaſh'd becauſe it did not appear by the Order, that the

Child was born in that Pariſh to which the Money was to be paid. *Styl.* 368.

It was reſolved, that the Words of the 18 *Eliz.* (next Quarter-Seſſions) ſhall be intended at the next Quarter-Seſſions, of that Part of the County where it was made, and not the next Seſſions of the County, becauſe that would be miſchievous in many Counties. *Trin.* 15 *Car.* 2. 1 *Syd.* 149. *Rex* verſus *Coyſtan.* In the ſame Caſe it was reſolved, that when Orders about Baſtards made by Juſtices of Peace are void for Part, and againſt Law, yet for ſo much as is good they would confirm them.

Words (next Quarter-Seſſions) extend to next Seſſions for part of the County.

H. was ordered by two Juſtices to pay 8 *l.* towards keeping a Baſtard-Child; but had no Notice of the Order 'till the Time given him by the Statute to appeal to the Seſſions was paſt. The Court made a Rule, that the next Seſſions in *Middleſex* (where the Matter was) ſhould hear the Matter, and make an Order for the Charge or Diſcharge of *H.* and that ſhould be final. *Paſch.* 19 *Car.* 2. *B. R.* 1 *Syd.* 326. *King* verſus *Hill.*

When Father had not due Notice to appeal next Seſſions to ſettle it.

Two Juſtices make an Order for *R.* to keep a Baſtard-Child, who appeal'd to the Seſſions, where they vacated the Order, and referr'd it back to the Juſtices, who do nothing: This was remov'd by *Certiorari*, and the Court reſolved, that the referring back to the Juſtices by the Quarter-Seſſions was not warranted, *Mich.* 21 *Car.* 2. *B. R.* *Vent.* 48. *Burnet*'s Caſe. But they might have referr'd it back before they had allow'd or diſallow'd the Order. *Smith*'s Caſe, *Mich* 6. *Car.* 1.

Seſſions muſt not refer the Order back to the two Juſtices.

An Order made without Complaint of the Pariſh Officers is not good. *Blackerby*'s Caſes 44.

An Order made without Complaint of the Pariſh Officers not good.

Two Juſtices make an Order, from which the Defendant appeal'd to Seſſions, who confirmed the Order of the two Juſtices; and upon the Defendant's not giving Security the Seſſions committed him; but objected the Seſſions have no ſuch Power, *Trin.* 12 *Will.* 3. *King* verſus *James.* Indeed it is uſual in this Caſe to take the Party's own Recognizance to appear at the next Seſſions, and to abide ſuch Order as the Juſtices ſhould make therein; and therefore the Juſtices, before they had allowed of the Appeal, ſhould have taken Security. But the Seſſions cannot commit for not finding Security. *Regina* verſus *Chaſſy*, 2 *Ann.* 2. *Bulſtrode* 341.

Seſſions can't commit for not finding Security.

Two Juſtices cannot order the reputed Father to give Security for the Performance of their Order before

fore he hath made Default of obeying that Order. *Blackerby*'s Caſes 45.

If a Woman conceal the Death of her Baſtard, and do not prove by one Witneſs that it was Still-born, it is Murder. *Vid.* Stat. 21 *Jac.* 1. *c.* 27.

A Baſtard is no Child in the Statute of Wills. 1 *Inſt.* 123.

Order was, Whereas a certain Woman was brought to Bed of a Female Baſtard-Child in *N.* and after dropt it in *S. Cur.* You muſt either name her, or ſay a Perſon unknown; and it was quaſh'd.

In an Order of Baſtardy, not ſaid one of the Juſtices was of the *Quorum*, quaſh'd. *Queen* and *Knott*, and *Queen* and *Cotton*, *Paſch.* 1712.

In the Order, not ſaid the Child was born in the Pariſh; and quaſh'd. *Queen* and *Caſh.*

If Conſtable ſuffers one, whom he has apprehended on a Warrant for getting a Baſtard-Child, to eſcape, the Juſtices have no Authority to order the Conſtable to pay any Money towards keeping the Baſtard, tho' they may the Father or Mother. *Queen* and *Jeffereys.*

If the Officers are carrying a Perſon by Order of Removal, and ſhe be delivered on the Road *in tranſitu*, the Baſtard ſhall go with the Mother whither ſhe was going; and if there be an Order made, and before that Order can be ſerved the Baſtard is born, it gains no Settlement, but ſhall be ſent with the Mother.

An Order of Baſtardy was quaſh'd, becauſe not ſaid the Child was born in the Pariſh.

The reputed Grandfather of a Baſtard is not to be charged, as in Caſe of a Legitimate Child. *Black.* 59.

A Baſtard was born in one Pariſh, but taken and kept by the reputed Father in another, and after twenty Years he dies, it is to be kept by the Mother, if able; and if not, by the Father's Pariſh. 2 *Bulſt.* 250, 293. *Black.* 52.

An Order of Maintenance of a Baſtard does not determine its Settlement. *Hill.* 5 *Ann. Black.* 70.

The Two Juſtices cannot make an Order upon the Woman's Complaint only. *Black.* 63.

Where Quarter-Seſſions firſt make an Order in Baſtardy, and afterwards the two Juſtices make one, it is a *Nullity*. *Black.* 51, 52.

If the two Juſtices make not a Proviſion for the Baſtard, the Seſſions muſt ſettle it as the two Juſtices ought to have done it. *Jones* 330.

An Order to pay ſuch Charge as the Pariſh had been at, and did not ſay that the Child was likely to be chargeable, and yet held good. 1 *Vent.* 37.

Seſſions may Order a Payment notwithſtanding the Child's Death.

Ill, it not appearing the Child was born in the Pariſh to which the Money was ordered to be paid. *Style* 14, 368.

A Man being adjudg'd to be the putative Father by Juſtices of Peace at the Seſſions, which is by Authority of the Statute Law, it cannot be impeached in the Spiritual Court, nor elſewhere. *Cro. Jac.* 625. 2 *Sid.* 29. 1 *Vent.* 59. 1 *Keb.* 546.

The two firſt and next Juſtices have no Power to commit any one for not performing their Order, but they are to bind him over to appear at the next Quarter-Seſſions, and may commit for want of Sureties. 2 *Bulſt.* 341. *Hammond's* Caſe. The Recognizance taken ought to be in the Disjunctive, *viz.* to perform the Order by them made, or to appear at the next Quarter-Seſſions, and to abide the Order there. 2 *Bulſt.* 341, 342.

The Pariſh where a Baſtard is born, whoſe Father cannot be found, muſt maintain it.

The bare conſpiring to charge one with the Keeping of a Baſtard-Child, though the Woman be not with Child, nor there be no Child really, but only a Contrivance to defame the Perſon, and cheat him of his Money, is a Crime of a very heinous Nature, and indictable. 1 *Vent.* 304. 1 *Levinz.* 62.

A Baſtard-Child is generally to be ſettled where it is born; but if it be born in a Pariſh to which the Mother is removed by an Order that is illegal, it will gain no Settlement there. *Salk.* 121, 532. Baſtard ſettled where born.

On Motion to quaſh an Order of two Juſtices to remove a Woman and her Baſtard-Child from *A.* to *B.* whereas it appeared in the Order that the Child was born at *C.* By *Holt*, Ch. Juſtice, the Baſtard muſt be kept where born. *Trin.* 11 *W.* 3. *B. R.* 2 *Salk.* 485.

An Order of Baſtardy under the Hands of more than two Juſtices is good (if one of them be of the *Quorum*) for the Statute is not reſtrictive to two; but there muſt be two at the leaſt. *Salk.* 477. From an Order of Baſtardy the Appeal muſt be to the next Quarter Seſſions. *Salk.* 482. And Orders relating to Baſtard-Children cannot be quaſh'd, except the reputed Father be preſent in Court. 2 *Salk.* 475. Orders about Baſtard Children, unleſs Father in Court.

If the Seſſions proceeds againſt a Father of a Baſtard-Child on the 18th *Eliz.* it has no Power to commit him, but to proceed on his Recognizance: But if on the 3 *Car.* 1. the Seſſions may make a Commitment, Seſſions can't commit on 18 Eliz. but on 3 Car. 1. may.

as the two Juſtices might have done; that is, unleſs the Party put in Security to perform the Order, or to appear at the next Seſſions. *Trin.* 4 *Ann.* B. R. 1 *Salk.* 122.

Pariſh Officers may ſeize Goods, and receive Rents of reputed Parents of Baſtards.

Tho' by the Stat. 14 *Car.* 2. *cap.* 12. The Church-wardens and Overſeers of the Poor of any Pariſh where a Baſtard-Child is born, may ſeize ſo much of the Goods, and receive ſo much of the Rents of the Lands of the reputed Father and Mother as ſhall be ordered by two Juſtices; yet they cannot ſell the Goods by Virtue of the Order of the two Juſtices: The Seſſions muſt make an Order for that Purpoſe.

So of a Man leaving his Wife and Family to the Pariſh.

This Stat. 12 *Car.* 2. extended only to Baſtard-Children; but by the Stat. 5 *Geo.* 1. *cap.* 8. 'tis enacted, That the Church-wardens or Overſeers of the Poor of ſuch Pariſh where any Man ſhall leave his Wife or Child, or Children, upon Application to two Juſtices, and by their Warrant or Order may ſeize and take ſo much of his Goods and Chattels, and receive ſo much of the annual Rents and Profits of his Lands and Tenements as they ſhall Order, for or towards the Diſcharge of the Pariſh where ſuch Wife, Child, or Children ſhall be left, for the bringing up and providing for them; which Order being confirmed by the next Quarter-Seſſions, that Court may make an Order to the Church-wardens or Overſeers of the Poor of ſuch Pariſh, to diſpoſe of ſuch Goods and Chattels by Sale or otherwiſe, as the Court ſhall think fit for the Purpoſes aforeſaid; and likewiſe to receive the Rents and Profits of the Lands, *&c.* or ſo much thereof as the Seſſions ſhall order the Church-wardens, *&c.* to be accountable to the Seſſions for all the Money they ſhall receive by Virtue of this Act.

By *Hyde*, Ch. Juſtice, the Juſtices ought not to commit for not performing their Order of Quarter-Seſſions, where they alter the former Order made by the Juſtices who had firſt the Examination, for by the ſecond Order the firſt was made null.

Caſes of Baſtardy.

It appeared by Proof before two Witneſſes, that *Smith* was the reputed Father of a Baſtard-Child, and the Juſtices made an Order for Maintenance of the Child, and for Diſcharge of the Pariſh, according to Law, and afterwards committed him for not performing the Order. Reſolved, The Commitment was void, and that the Juſtices ſhould have taken Bond of him to appear at next Seſſions.

Where

Where there is an Order by two Juſtices, and the Seſſions order a Reference; Reſolved, The Reference by the Juſtices at the Seſſions before they had allowed or diſallowed the firſt Order, was illegal.

And ſo upon the Statute 43 *Eliz. cap.* 4. for charitable Uſes, if the Commiſſioners make an Order or Decree in the Caſe, and upon Appeal to the Lord Keeper, and Exceptions put in, if upon that the Decree made by the Commiſſioners be confirm'd by the Lord Keeper, this Decree is by this made to be final, and no ſubſequent Appeal to be admitted.

The King *againſt* Barebaker *in the Court of King's Bench.*

BY an Order of two Juſtices of the Peace, that the Defendant *Barebaker* ſhould pay a certain Sum of Money weekly 'till the Baſtard-Child ſhould attain the Age of 14 Years; It was held by the Court, that the Order was nought, becauſe that the Juſtices have no Power but to ſave and indemnify the Pariſh, and that is only to oblige the Defendant *Barebaker* to maintain the Child as long as it is, or may be chargeable to the Pariſh.

Upon a ſpecial Order of the Seſſions the Queſtion was, That if the Husband be *ultra mare*, and during that Time, the Wife be got with Child, whether the Child be a Baſtard within the Statute of 18 *Eliz. c.* 3. It was by *Holt*, Ch. Juſtice, ſaid, That if the Husband was out of the four Seas during the whole Time of the Wife's going with Child, in that Caſe the Child is a Baſtard; but if the Husband were here at all within that Time, it is Legitimate and no Baſtard. Beſides, it did not appear by the Order, that the Husband was abſent all the Time: The Order was for theſe Reaſons quaſh'd.

The Defendant *Weſton* being adjudged the Father of a Baſtard-Child by two Juſtices of the Peace, ſeveral Exceptions were taken to the ſaid Order: Firſt, That by the Order he was to pay ſo much weekly to the Overſeers of the Poor of the Pariſh, but that was over-ruled; for as before the Inſtitution of the Overſeers, the Juſtices might, and often did in theſe Caſes, order the Money to be paid to ſome of the Inhabitants; ſo now they may to the Overſeers who have the Care of the Poor. The ſecond Exception was, that it is ſaid in the Order, *We two of her Majeſty's Juſtices*

of the Peace doth adjudge, &c. which is the *Singular* Number inſtead of *do* the *Plural*; and 1 *Cro. Rep.* 489. was cited to make this Exception good; whereupon this Order was quaſh'd.

This Cauſe came into the *K. B.* by *Habeas Corpus*; and the Caſe was, That *Weſton* the Defendant had appeal'd to the Seſſions where the Order was confirm'd, and he was committed for not paying the Money ordered; and Mr. *King* (now Lord Chancellor) took this Exception to the Return of the *Habeas Corpus*, *viz.* That the Seſſions ſhould have proceeded againſt him upon his Recognizance.

Upon a ſpecial Order of Seſſions, wherein the Fact was ſtated for the Opinion of this Court, the Caſe was thus, That one *A.* was divorc'd *a menſa & thoro*, and afterwards his Wife lived with one *Ellis* in Adultery, in the Pariſh of St. *Giles*, and had ſeveral Children by her, and they all went by the Name of *Ellis*, and regiſtred in the Pariſh Book as his. It was held by the Court, That when a Woman is ſeparated from her Husband by ſuch a Divorce, the Children that ſhe ſhall have during that Separation, are Baſtards; for we will intend a due Obedience to the Sentence, unleſs the Contrary plainly appears: But if Baron and Feme, without Sentence, ſhall part and live ſeparate, the Children in that Caſe ſhall be taken to be Legitimate, and ſo deemed 'till the Contrary be proved, for Acceſs ſhall be intended: But if a Special Verdict find the Man had no Acceſs, it is a Baſtard; and ſo was the Opinion of the Court.

In the Caſe between *Budworth* and *Damply*, *Hill.* 5 *Ann.* it was held, 1ſt, That an Order made upon the Overſeers of any Pariſh by two Juſtices, for raiſing a Sum towards the Maintenance of a Baſtard, or poor Perſon, does not determine the Settlement of that Perſon in that Pariſh; for the Right of Settlement is not conteſted, but preſumed.

2dly, That the Clauſe in the Stat. 13 & 14 *Car.* 2. *cap.* 12. which provides, That diſtinct Townſhips of large Pariſhes in the *Northern* Counties ſhall reſpectively provide for their Poor, under the Penalty mentioned in the Statute 43 *Eliz. cap.* 1. muſt be underſtood with Reſpect to the Maintenance of poor and impotent Perſons, and not with Reſpect to Baſtards, who are provided for by other Statutes; but if a Baſtard be grown up, and by Accident grow lame or impotent, he ſhall be relieved as a poor Perſon within that Statute.

An Order by two Juſtices for the Maintenance of a Baſtard-Child was excepted to by Mr. *Page* (now one of his Majeſty's Juſtices of the King's Bench) becauſe the Defendant *Adam* was upon Sight of the ſaid Order to pay nine Pounds in one entire Sum, and afterwards ſo much *per* Week, as therein mentioned. It was held by the Court, that by the Statute the Juſtices are to take Order for Relief of the Pariſh, and keeping of the ſaid Child, by Payment of Money, either weekly or otherwiſe; and this Sum may be only for indempnifying the Pariſh for Money laid out before the reputed Father could be found.

A Widow of *Cobham* having two Daughters by her former Husband under the Age of ſeven Years, was married to a Man at *Chatham*, but a Pariſhioner of St. *Paul's Shadwel*, and the Man never gain'd any legal Settlement at *Chatham*; the Woman died, and this being referr'd to the two Judges of Aſſiſe, they were of Opinion the two Daughters ought to be ſettled at *Cobham*, notwithſtanding *Shadwel* had given a Certificate owning the ſaid Man and his Wife to be their Pariſhioners: But the chief Reaſon was, becauſe the two Daughters never had lived with their Mother after the ſecond Marriage.

Upon a Motion to quaſh an Order, the putative Father muſt be in Court. The Objection was, That the Order did not ſet forth that the Child was likely to be chargeable; but adjudg'd that it is ſelf-evident that Baſtards are likely to be chargeable. 2 *Salk.* 475.

If the Child dies after the Order is made by the two Juſtices, and before the next Seſſions, and no Security be given to perform the Order, then when the Party appears at Seſſions they may order him to pay the Charges, upon Proof of ſerving the Order.

But if Security hath been given, then the Seſſions have no further Power; but the Bond muſt be put in Suit if the Condition is not performed.

The Bond muſt be made to the Church-wardens, *&c.* and their Succeſſors.

By the Statute 7 *Jac.* 1. the Juſtices of Peace may commit lewd Women to the Houſe of Correction, who have Baſtards that may be chargeable to the Pariſh, there to be puniſh'd and ſet to work for a Year.

But ſhe is not to be ſent to the Houſe of Correction 'till the Child is born, and the Woman well again; and the Child muſt be living, and chargeable to the Pariſh.

The Conſtable willingly or negligently ſuffering the Father to eſcape after he is apprehended by a Warrant, one Juſtice may bind him over to the Seſſions, and there he may be order'd to contribute towards the Maintenance of the Child, or may be fined.

So may any Perſon who ſhall perſwade, procure, or convey away the reputed Father, or who ſuffers the Mother to eſcape, or conveys her away.

But this not by Virtue of any of the Statutes made againſt Baſtardy; 'tis only a diſcretionary Act in the Juſtices, which the Conſervators had at Common Law.

A Warrant to bring a Woman ſuſpected to be gotten with a Baſtard Child before a Juſtice of Peace, to be examined thereupon.

To the Conſtable of the Pariſh of, &c.

Eſſex, ſſ. WHereas Complaint hath been made unto me this preſent Day, by the Overſeers of the Poor, and other credible Inhabitants of your Pariſh, that J. F. of your ſaid Pariſh, ſingle Woman, is now with Child of a Child, which when born is likely to be a Baſtard, and chargeable to the ſaid Pariſh: Theſe are therefore in his Majeſty's Name, ſtrictly to Charge and Command you, and every of you, that you, ſome or one of you do bring the ſaid J. F. before me, or ſome other of his Majeſty's Juſtices of the Peace of the ſame County, to be examined touching the Premiſſes, and that you do likewiſe give Notice to the ſeveral Perſons, whoſe Names are here under written, that they and every of them are required to appear with the ſaid Woman before me, at my Houſe in, &c. in the Pariſh aforeſaid, on the Day of this inſtant May, at nine of the Clock in the Forenoon, to teſtify their ſeveral Knowledges touching the Premiſſes, to the End that upon Examination of the ſaid Matter, and the Circumſtances thereof, ſuch Order may be taken therein as to Juſtice doth appertain: Whereof fail not at your Perils. Given under my Hand and Seal, the, &c.

(1.) Vid. Jones's Rep. 330. Styl. Rep. 475. Jenkins's Rep. 47. Bulſtrode's Rep. 2. Part 341, 342, 393, 398. Noy's Rep. 79.

Exami-

Examination of a Woman with Child of a Baſtard.

Eſſex, ſſ. The Examination of *M. W.* of, &c. ſingle Woman, taken before me *W. B.* Eſq; one of His Majeſty's Juſtices of the Peace for the ſaid County, this firſt Day of *February*, Anno Domini, 1714.

THIS *Examinant ſaith, that on or about the* 22*d Day of* Auguſt *laſt paſt, and on or about the* 7*th Day of* September *then following, one* J. E. *(who was then a Fellow Servant with this Examinant, at the Houſe of one Mr.* S. A. *of,* &c. *in the County aforeſaid) did in the Houſe of the ſaid* S. A. *through Wheedlings, and Promiſes of Marriage, offer to lye with her; and at length, on the Days and at the Place aforeſaid, had carnal Knowledge of (or did enter and had carnal Knowledge of) her Body three ſeveral Times, whereby ſhe, this Examinant, is now big with Child; and this Examinant further ſaith, that no other Perſon beſides the ſaid* J. E. *had ever any Knowledge of her Body, and that he the ſaid* J. E. *is the only Father of the ſaid Child.*

A. B.

Jurat Coram me Die & Anno Supradict'.

C. G. (*and Seal.*)

A Warrant to apprehend the reputed Father of a Baſtard.

Eſſex, ſſ. WHereas *upon the Examination of* M. W. *of,* &c. *ſingle Woman, this Day taken upon Oath before me, it appears that ſhe is now with Child of a Baſtard, begot on her Body by one* J. E. *of your Pariſh; and whereas the ſaid Baſtard, when born, may be chargeable to the Pariſh of,* &c. *Theſe are therefore in his Majeſty's Name to Command you to apprehend the ſaid* J. E. *if he be within your Pariſh, and to bring him before me, or ſome other Juſtice of the Peace for this County, to anſwer what is laid to his Charge as aforeſaid; and that you do require the ſaid* J. E. *to bring with him ſufficient Sureties to enter into Recogniſance for his Appearance at the next Seſſions, accord-* 18 Eliz. c. 3.

ing to the Direction of the Acts of Parliament in that Caſe made. Given, &c.

Condition of the Recognizance for the Appearance of the reputed Father at the Seſſions.

18 Eliz. *THE Condition of this Recognizance is ſuch, That whereas the above-bound* J. E. *upon the Examination of* M. W. *of*, &c. *taken before*, &c. *is charged with being the Father of a Baſtard-Child, whereof ſhe the ſaid* M. W. *now goeth. If therefore the ſaid* J. E. *ſhall perſonally be, and appear before His Majeſty's Juſtices of the Peace, at their next General Quarter-Seſſions of the Peace, to be holden at*, &c. *on the Day*, &c. *for the ſaid County of*, &c. *then and there to ſubmit to what ſhall be enjoined by the ſaid Court, concerning the ſaid Premiſſes; and in the mean time ſhall be of the Good Behaviour; That then*, &c. *or elſe*, &c.

A Mittimus on his refuſing to give ſuch Recognizance.

Eſſex, ſſ. *WHereas* M. W. *of*, &c. *upon her Examination taken on Oath, before*, &c. *on*, &c. *did charge* J. E. *of*, &c. *with being the Father of a Baſtard-Child, whereof ſhe was then, and now is big: And whereas by Virtue of my Warrant, bearing Date*, &c. *directed to the Conſtable of the Pariſh of*, &c. *the ſaid* J. E. *was taken up and brought before me to anſwer the Premiſſes, but he hath refuſed to enter into a Recognizance with Sureties for his Appearance at the next Quarter-Seſſions, to be held for this County, and to give Security for the Maintenance of the Child when born, as the Law in ſuch Caſes directs; Theſe are therefore in His Majeſty's Name, to command you the ſaid Conſtable, to convey the ſaid* J. E. *ſafely to the common Goal, and to deliver him to the Keeper thereof: Hereby requiring you the ſaid Keeper, to receive the ſaid* J. E. *into your Cuſtody, and him ſafely to keep in your common Gaol aforeſaid, till he ſhall be diſcharg'd by due Courſe of Law. Hereof fail not.* Given, &c.

A Waſ-

A Warrant to bring the reputed Father and Mother, and Witneſſes before the Juſtices for Examination, before they make their Order.

Eſſex, ſſ. *WHereas* M. W. *of*, &c. *hath lately been delivered of a Baſtard-Child, which is now living, and likely to be chargeable to the Pariſh of*, &c. *aforeſaid; And whereas the ſaid* M. W. *on her Examination bearing Date*, &c. *taken on Oath by* W. B. *Eſq; one of His Majeſty's Juſtices of the Peace for this County, hath declared that* J. E. *of your Pariſh is the Father of the ſaid Baſtard-Child: Theſe are therefore in His Majeſty's Name to command you to bring the ſaid* J. E. *before us, on*, &c. *at*, &c. *to be examined concerning the Premiſſes: And you are hereby required to give Notice to the ſaid* M. W. *to appear before us at the Time and Place aforeſaid; and that you do bring with you*, A. B. C. D. &c. *then and there to Teſtify what they know relating to the Premiſſes, to the End ſuch Order may be made for the Maintenance of the ſaid Baſtard, and for the indemnifying the ſaid Pariſh of*, &c. *of and from the ſame, as the Statute directs.* Given, *&c.* 18 Eliz.

The Order of two Juſtices for the Maintenance of a Baſtard-Child.

Eſſex, ſſ. *WHereas, on or about*, &c. M. W. *of*, &c. *was deliver'd of a Baſtard-Child in the ſaid Pariſh of*, &c. *which is now living, and likely to become chargeable to the ſaid Pariſh of*, &c. *And whereas upon due Examination of the Premiſſes, it appears that* J. E. *of*, &c. *is the Father of the ſaid Baſtard Child. Now We* A. B. *of*, &c. *Eſq; and* C. D. *of*, &c. *Eſq; two of his Majeſty's Juſtices of the Peace for the County aforeſaid, and living neareſt to the ſaid Pariſh of*, &c. *of any in the ſaid County, for the Relief of the ſaid Pariſh, of*, &c. *and for the Maintenance of the ſaid Baſtard Child, do this Day*, &c. *according to the Statutes in that Caſe made and provided, Order the ſaid* J. E. (*which we adjudge to be the Father of the ſaid Baſtard*) *to pay Weekly, and every Week, from the Time of the Birth of the ſaid Child, and ſo long as he ſhall be chargeable to the ſaid Pariſh of*, &c. *unto the Church-wardens or Overſeers of the Poor of the ſaid Pariſh*, &c. *for the Time being, the Sum of* 1 s. *and* 6 d. *for and towards the Maintenance of the ſaid Child. And we do hereby* 18 Eliz.

hereby further Order that the ſaid M. W. *ſhall pay Weekly, and every Week, for ſo long Time as the ſaid Child ſhall be chargeable to the ſaid Pariſh of*, &c. *and he ſhall not keep the ſame, the Sum of* 1 s. *to the Church-wardens or Overſeers of the Poor of the ſaid Pariſh for the Time being, for the further Maintenance of the ſaid Child.* In Witneſs, &c.

To this Order might be added a Mittimus to ſend the Mother to the Houſe of Correction, eſpecially if ſhe be not order'd to pay a Weekly Sum towards Maintenance of the Child.

A Warrant to be added at the Foot of the preceding Order, for giving Notice thereof to the reputed Father, *&c.*

THeſe are in His Majeſty's Name to Command you, or ſome of you, with all convenient Speed, to give Notice of the Order above, unto the Mother, and the reputed Father therein mentioned, to the End they and every of them may the better obſerve and perform the ſame.

An Order of Baſtardy under the Hands of more than two Juſtices, is good, (if one of them be of the *Quorum*) for the Statute is not reſtrictive to two, but there muſt be two at the leaſt. *Salkeld's Rep.* 477. And Orders relating to Baſtards can't be quaſh'd, unleſs the reputed Father be preſent in Court. 2 *Salk.* 475.

The Form of Commitment for not obeying the Juſtice's Order, *&c.*

Two Juſtices Quorum unus.

Eſſex, ſſ. *WHereas by an Order made and ſubſcribed by us, on the 7th Day of* October *laſt, concerning a Female Baſtard-Child, lately born of the Body of* A. P. *a ſingle Woman, in the Pariſh of* H. *in the County aforeſaid, and chargeable to the ſaid Pariſh, We have adjudged* I. L. *of*, &c. *to be the reputed Father of the ſaid Baſtard-Child, according to the Form of the Statute in that Caſe made and provided; and amongſt other Things in the ſaid Order contained, We have order'd that the ſaid* J. L. *ſhall Weekly pay, or cauſe to be paid to the Church-wardens or Overſeers of the Poor of the Pariſh of*, &c. *the Sum of Two*

Two Shillings for the Maintenance of the ſaid Child; and ſhall likewiſe pay unto them the Sum of Four Pounds within three Months after the ſaid Child ſhall attain her Age of twelve Years, if ſhe ſhall ſo long be chargeable to the ſaid Pariſh, to put her to be an Apprentice. And whereas it hath been duly proved before us, that the ſaid J. L. *had perſonal Notice thereof, but hath not hitherto performed the ſame, or given Security ſo to do, or enter'd into a Recognizance to appear at the next Quarter-Seſſions: Theſe are therefore in His Majeſty's Name to Command you to apprehend the ſaid* J. L. *and to deliver him to the Keeper of the Gaol aforeſaid, to be by him kept therein without Bail or Mainpriſe, except he ſhall give ſufficient Security to perform the ſaid Order or enter into a Recognizance perſonally to appear at the next General Quarter-Seſſions of the Peace, to be holden for the Eaſt Part of the ſaid County of* Eſſex, *to abide ſuch Order as the Court ſhall there take concerning the Premiſſes, if any ſuch Order ſhall be then made; and if not, then to abide and perform the Order already made, as aforeſaid; Commanding alſo you the aforeſaid Keeper of the ſaid Gaol, to receive the ſaid* J. L. *into your Cuſtody, and him ſafely to keep, according to the Purport of this Precept.* Given *under our Hands and Seals this* 10th *Day of* October.

If the Seſſions proceed againſt a Father of a Baſtard-Child, on the 18th *Eliz.* it has no Power to commit him, but to proceed on his Recognizance; but if on the 3d *Car.* 1. the Seſſions may make a Commitment, as the two Juſtices might have done; that is, unleſs the Party put in Security to perform the Order, or to appear at the next Seſſions, &c. *Trin.* 4 *Ann. B. R.* 1 *Salk.* 122.

Condition of a Recognizance (after the Order made) for the reputed Father's Appearance at Seſſions to appeal to the ſaid Order.

THE *Condition of this Recognizance is ſuch, That if the above-bound* J. E. *do and ſhall perſonally appear at the next General Quarter-Seſſions of the Peace, to be holden at,* &c. *on,* &c. *for the ſaid County of,* &c. *and then and there abide ſuch Determination as ſhall be made by the Court, concerning a Baſtard Child lately born of the Body of* M. W. *in the Pariſh of,* &c. *whereof he the ſaid* J. E. *is charged*

to be the Father, if any ſuch ſhall be then made; and in Default thereof, if the ſaid J. E. *do and ſhall perform the Order therein already made by*, &c. *then*, &c.

Condition of a Bond to diſcharge the Pariſh of a Baſtard-Child.

Joſephum E. de, &c. & &c. teneri, &c. *Ed'ro F.* & *Georgio H.* Eccleſ. Guardian' ac Superviſor' Pauperum de Paroch. A. in Com. &c. Adminiſtrator', Succeſſor', vel Aſſign' ſuis, &c.

WHereas M. W. *of*, &c. *before* W. B. *Eſq; one of His Majeſty's Juſtices of the Peace for the County of*, &c. *aforeſaid, hath ſworn that ſhe is great with Child; (or the ſaid* M. W. *hath lately been deliver'd of a Baſtard-Child) and that the above-bounden* J. E. *is the Father of ſuch Child, or Children: Now the Condition of this Obligation is ſuch, That if the ſaid* J. E. *and the above-bound* A. B. *and* C. D. *or either or any of them, their, or either, or any of their Heirs, Executors, or Adminiſtrators, do and ſhall from Time to Time, and at all Times hereafter, fully and clearly acquit, exonerate and diſcharge, or otherwiſe well and ſufficiently ſave and keep harmleſs, and indemnified, as well the above-named* E. F. *and* G. H. *Church-warden and Overſeer of the Poor of the Pariſh of*, &c. *aforeſaid, and their Succeſſors for the Time being, and every of them, as alſo all the Inhabitants and Pariſhioners of the ſaid Pariſh of*, &c. *which now are, or hereafter ſhall be for the Time being, and every of them, of, and from all, and all manner of Expences, Damages, Coſts and Charges whatſoever, which ſhall or may at any time hereafter ariſe, happen, come, grow, or be impoſed upon them, or either or any of them, for, or by reaſon, or means of the ſaid* M. W.'s *being now great with Child, as aforeſaid; or for or by reaſon, or means of the Birth, Maintenance, Education, and bringing up ſuch Child or Children that ſhe the ſaid* M. W. *now goeth with; and of and from all other Suits, Troubles, Charges, Damages and Demands whatſoever, touching and concerning the ſame; Then*, &c. *or elſe*, &c.

An

An Order for the Relief of the Pariſh out of the Eſtate of the reputed Father.

Eſſex, ſſ. *Whereas it appeareth unto us, upon the Complaint of the Church-Wardens and Overſeers of the Poor of the Pariſh of*, &c. *that* J. L. *the reputed Father of a Baſtard-Child, lately born in the ſaid Pariſh, is departed from his uſual Place of Abode, and hath left the ſaid Child upon the Charge of the aforeſaid Pariſh, though he hath a ſufficient Eſtate to diſcharge and indemnify the ſame: Theſe are therefore to require you to ſeize and take ſo much of the Goods and Chattels of the ſaid* J. L. *and to receive ſo much of his Rents Yearly iſſuing out of his Lands as will amount unto the Sum of*, &c. *which we do hereby appoint you to receive for, and towards the Diſcharge of the ſaid Pariſh, according to the Form of the Statute in that Caſe made and provided.* Given *under our Hands and Seals*, &c.

Two Juſtices, Quorum unus. 14 Car. 2. c. 12.

A Warrant for puniſhing the reputed Father of a Baſtard-Child.

Eſſex, ſſ. *Whereas* M. W. *of*, &c. *hath lately been deliver'd of a Baſtard-Child within the Pariſh of*, &c. *which Child is now living, and chargeable to the ſaid Pariſh of*, &c. *And whereas upon the Examination of the ſaid* M. W. *taken by*, &c. *ſhe the ſaid* M. W. *hath ſworn, that* J. E. *of your Pariſh begot the ſaid Child on her Body; And whereas I am credibly inform'd that the ſaid* J. E. *takes no care to maintain the ſaid Child, or to diſcharge the Pariſh therefrom; Theſe are therefore in His Majeſty's Name to require you to ſtrip, or cauſe to be ſtripped, the ſaid* J. E. *naked from the Middle upwards, and to bind him to the common Whipping-Poſt in your Pariſh, and there whip, or cauſe him to be publickly whipp'd in ſuch manner as is uſual in ſuch Caſes.* Given, &c.

1 Jac. 1.

A Mittimus of the Mother of a Baſtard to the Houſe of Correction.

Eſſex, ſſ. *Whereas* A. P. *of*, &c. *hath lately been deliver'd in the ſaid Pariſh of a Female Baſtard-Child, yet living and chargeable to the ſaid Pariſh,*

Two next Juſtices, Quorum unus. 7 Jac. c. 4.

By this Precedent you may ſee that ſhe is not to be ſent to the Houſe of Correction till the Child is born, and the Woman well again, and that the Child muſt be living and chargeable to the Pariſh.

and

and likely ſo to continue: Theſe are therefore to command you the ſaid Conſtable, to apprehend the ſaid A. P. *and her ſafely to convey to the Houſe of Correction aforeſaid, and to deliver her to the Keeper thereof, together with this Precept; Commanding alſo you the aforeſaid Keeper, to receive the ſaid* A. P. *into your Cuſtody, and there to puniſh her, and ſet her to Work, for and during the Space of one whole Year, next enſuing, according to the Form of the Statute in that Caſe made and provided; and hereof fail not at your reſpective Perils.* Given *under our Hands and Seals,* &c.

A Warrant againſt the Mother for the ſecond Offence.

Two Juſtices, Quorum unus. 7 Jac. c. 4.

Eſſex, ſſ. WHereas A. P. *of,* &c. *a lewd Woman, hath been formerly deliver'd of a Baſtard-Child, in the Pariſh of,* &c. *born of her Body out of lawful Matrimony, and chargeable to the ſaid Pariſh: And whereas ſhe hath again offended the ſecond Time, in the like Nature: Theſe are therefore to Command you the ſaid Conſtable, to take the ſaid* A. P. *and her ſafely to convey to the aforeſaid Houſe of Correction, and there to deliver her to the Keeper thereof, together with this Precept; commanding alſo you the ſaid Keeper to receive the ſaid* A. P. *into your Cuſtody, and there to puniſh her, and ſet her to Work until ſhe ſhall give good Security for her good Behaviour, not to offend in the like manner again; and hereof fail not at your reſpective Perils.* Given *under our Hands and Seals,* &c.

Beggars. See Vagrants.

Behaviour. See Peace, &c.

Who may be required to find Sureties for their good Behaviour.

THoſe who are of ill Fame, or common Diſturbers of the Peace: Thoſe who are accuſed, or guilty of any of the Offences herein after ſpecified, may be required by one Juſtice to enter into a Recognizance with Sureties, or without them, according to the Diſcretion of the Juſtice, to be of the Good Behaviour; and upon Refuſal may be committed.

Ale-

Ale-Houſes. — Tiplers in them, or Publick-Houſes.

Baſtardy. { Helpers to convey away the putative Fathers of Baſtard-Children. Reputed Parents of Baſtard-Children; but it muſt be for the Mother's ſecond Offence, after Conviction for the firſt.

Barretry. — Common Barretors.

A Man was indicted for a common Barretor, and after he was acquitted, he threatned the Witneſſes; whereupon he was bound to the Good Behaviour. *Latch.* 5. *Toplin*'s Caſe.

Bawdy. { Frequenters of, and Keepers of Bawdy-Houſes. Whore-mongers, and common Whores.

Conſpiracy. { One that conſpires to take away another's Life, and ſhall endeavour it.

Cheaters & Cozeners. { By Cards, Dice, or any other Game, or Games whatſoever.

Conies. { Hunting, Killing, or Stealing them, either in Park or Warren.

Drunkard. { Convicted by one Juſtice, or Head-Officer, or one Witneſs upon Oath.

Felony. { Acquitted, or Convicted and Pardon'd, if of an ill Fame.

Fiſh. { Thoſe convicted of ſtealing of Fiſh, or deſtroying the Pond.

Gaming. { Such as frequent Gaming-Houſes, and have no viſible Means of Livelihood.

Hawks. { Convicted of taking Hawks, or their Eggs out of the Grounds of another Perſon, may be bound for 7 Years.

Hue & Cry. — Raiſing it without a Cauſe.

Hunters. — In Parks and Warrens.

Idle Perſons. { Living well, and having no viſible Way to ſupport themſelves.

Thoſe

Juſtice of Peace.	Thoſe who misbehave themſelves before him or any other Officer in the Execution of Juſtice: Thoſe who ſpeak contemptible Words of him, or abuſe his Warrants: Thoſe who delude his Authority by Complaint without Proſecution. A Man may be bound to the Good Behaviour for ſaying the Juſtices of Peace do not underſtand the Statutes.
Libels, or Scandalous Letters.	Writers of them; Thoſe who contrive, procure, or publiſh Libels, whether True or Falſe, either againſt the Living or Dead, by Writings, Words, Pictures, or any other Signs of Reproach.
Misbehaviour.	Of any Kind whatſoever, which is left to the Juſtices Diſcretion.
Murderers, Manſlayers.	Such who are like to commit either of theſe Offences.
Night-walkers.	Thoſe who are ſuſpected to ſteal, or to commit any Miſdemeanour by Night.
Peace.	Thoſe who break it in any manner whatſoever.
Poiſon.	Mingling it with Corn, and giving it to Poultrey.
Repute.	— Thoſe of evil Repute.
Riot.	Thoſe who are found in the very Act; but if the Riot is over, then the Enquiry muſt be by a Jury.
Robbery.	Thoſe who lie in Wait, or attempt to rob another.
Suſpicion.	Perſons ſuſpected to lie in Wait to rob, &c.
Witneſs.	One being a material Witneſs for the King, refuſing to give Evidence, &c.

A Woman bound to the Behaviour for ſuborning of Witneſſes. *Blac.* 153.

A Warrant for the good Behaviour.

Eſſex, ſſ. WHereas I am credibly informed, that S. W. of &c. is a Perſon of a lewd Life and Converſation, * and a common Diſturber of the Peace: Theſe are therefore to command you to bring the aforeſaid S. W. before

* Here Name the Offence.

fore me, or ſome other Juſtice of the Peace for this County, to anſwer unto ſuch Matters as ſhall be objected againſt him, by T. F. &c. *And alſo that you require him the ſaid* S. W. *to bring ſufficient Sureties for his Good Behaviour, until the next General Quarter-Seſſions of the Peace, to be held,* &c. *And hereof fail not.* Given *under my Hand and Seal,* &c.

Upon this Warrant an Officer may break open an Houſe to take the Party. More's Reports 606.

The Recognizance for the Good Behaviour.

This May be taken without Sureties, if the Juſtice thinks fit, for 'tis diſcretionary in him.

Eſſex, ſſ. MEmorand. qd. A. B. de, &c. C. D. & E. F. de, &c. ter. die Januarii, Anno, &c. venerunt coram nobis G. H. & J. K. ar. duobus Juſticiar. Dom. Regis ad Pacem in Com. pred. conſervand. aſſignat. & in propriis perſonis ſuis recognoverunt ſe debere dicto Dom. Reg. modo & forma ſequen' viz. pred' A. B. in quadraginta libris & prefat. C. D. & E. F. in viginti libris ſeparaliter bone & legalis Monete Angl. de ſeparalibus terris & tenementis bonis & catallis ſuis & cujuslibet corum ad opus dict. Dom. Reg. Hered. & ſucceſſorum ſuorum fieri & levari ſi contingat pred. A. B. deficere in conditione infra ſcript'.

Cap. & cogn. Die & Anno ſupradictis coram nobis.

THE Condition of the Recognizance is ſuch, That if the above-bounden *A. B.* ſhall perſonally appear at the next General Quarter-Seſſions of the Peace, to be holden for, &c. to do and receive what ſhall be then and there enjoined him by the Court; and in the mean Time that he be of Good Behaviour towards our ſaid Sovereign Lord the King, and all other the People of this Kingdom, that then, &c.

B. R. will diſcharge one bound to the Peace, or good Behaviour, when done upon Malice or Vexation. *Style* 364.

It was holden by the Court, that if a Man be bound to the Good Behaviour by Juſtices of the Peace, for refuſing

refuſing to obey their Order, they ought not to grant a *Superſedeas*, becauſe the Party was not bound in that Court, upon Stat. 21 *Ja.* 1. *c.* 8. But they wou'd grant a *Habeas Corpus*, and if they ſaw Cauſe, to diſcharge him. *Hill.* 1 *Car.* 1. *Bendlowe's Rep.* 301. *Blacknell's* Caſe.

H. was a Vicar, and for ſaying in his Sermon, that Devourers of Church Lands never thrived to the third Generation, he was bound to his Good Behaviour. *Trin.* 16 *Car.* 2. *B. R. Keb. Rep. pt.* 1. *p.* 751. *pl.* 45. Juſtice *Tyrrel* againſt *Hat h.*

A Juſtice can't bind to the Good Behaviour upon a General Information, or upon ſuch to commit a Man for not finding Sureties. *Style* 18.

If a Juſtice, for want of Sureties for Good Behaviour, commit without Cauſe, 'tis falſe Impriſonment. To call a Mayor Fool, in the Execution of his Office, is a Breach of Good Behaviour; and ſo it is to threaten Witneſſes. *Latch.* 5. *Cro. Eliz.* 78.

If it be for the Peace, then ſay,

Mar. 247. To anſwer unto ſuch Matters as ſhall be objected againſt him, by *C. D.* of, *&c.* and to do and receive what ſhall be then and there enjoined by the Court; and in the mean Time to keep the Peace of our Sovereign Lord the King, as well towards His Majeſty, as all his Liege People, and eſpecially towards the ſaid *C. D.* and ſhall not do or procure to be done, any bodily Hurt to him, that then, *&c.*

The Juſtice muſt certify the Recognizance at the next Seſſions, or forfeits 10*l.* and if the Party doth not appear, the Recognizance it ſelf, with the Cauſe of the Forfeiture, muſt be certified in the *Exchequer*, that Proceſs may be awarded againſt the Offender, *Dalt.* 190.

Bad Words ſpoken to a Magiſtrate, not in the Execution of his Office, are not indictable, *Mod. Caſes* 124. But for ſuch little Offences *contra bonos mores*, the Law has made a proper Proviſion, and that is by requiring Surety of the Peace, or for the Good Behaviour, and by committing the Offender, if he refuſeth to find ſuch Sureties; or if he ſpeak ſuch Words in Court, they may proceed in a ſummary Way againſt him, by fining him for a Contempt of the Court, and committing him until he hath paid the Fine. 3 *Salk.* 190. Caſes cited *contra* 1 *Cro.* 503. 2 *Bulſt.* 139. 3 *Mod.* 139. *The Queen* verſus *Langley. Hill.* 2 *Ann.* Tho'

Tho' Good Behaviour may be granted upon Diſcretion, and that by one Juſtice out of the Seſſions, yet it is better not to do it, but upon ſpecial Cauſe ſeen to themſelves, or upon Suit of others, and thoſe very honeſt; and ſeldom for one Cauſe alone, and not by one Juſtice only. *Lamb.* 120. *Dalt.* 291.

Steward of the Sheriff's Turn, Leet, Pipowder may commit for an Affray in their View, and bind to the Good Behaviour. *Lamb.* 14.

Abuſing of Officers in executing their Office, as Juſtice of Peace, Conſtable, or other Officer of the Peace; as a Juſtice ſeeth a Man break the Peace, and doth charge him to keep the Peace, who anſwers he will not: Words of Contempt againſt a Juſtice of Peace, tho' he be not executing his Office. *Dalt.* 258. 2 *Roll.* 79.

A Conſtable was bound to his good Behaviour for arreſting one in the Church yard on a *Sunday*, after a *Certiorari* out of the King's Bench ſhewn. 1 *Cro.* 603.

One was bound, *&c.* for calling the Mayor Fool, tho' not in publick Place of Juſtice. 3 *Cro.* 78.

To be drunk is a Breach of good Behaviour, ſo is abuſing a Juſtice of Peace his Warrant.

So is he guilty of it who chargeth one with Felony before a Juſtice, and will not proſecute, or who abuſes a *Superſedeas* of the Peace to a wrong End.

If one be bound to the Peace, and afterwards do threaten *J. S.* to his Face, and in his Preſence, to kill or beat him, this is a Breach of the Peace, and a Forfeiture of his Recognizance; otherwiſe if he threaten in his Abſence, unleſs he lie in wait, and then it is. *Hill.* 18 *Ed.* 4. *Mich.* 22 *Ed.* 4. *Pulton de Pace* 22.

N. B. The Surety for the good Behaviour may be forfeited by the extraordinary Number of People which the Recognizor hath attending upon him; or wearing more, or other Weapons, than he before uſually did, or are meet for his Degree or Eſtate; or by uſing vigorous or terrible Words, or Threatnings, tending or inciting to the Breach of the Peace; or demeaning himſelf in his Behaviour, Company, or Geſture, or doing of any thing which ſhall tend to the Breach of the Peace; or to put the People in Dread or Fear. *Mich.* 2 *Hen.* 7. *f.* 2. *b. Pl.* 7.

But to a Forfeiture of a Recognizance of the Peace, there muſt be an actual Breach of the Peace by an Affray, Battery, or the like. 2 *Rolle's Rep.* 199. *Stamp*

& *Hyde. Mich* 18 *Ja.* 1. *Hill.* 18 *Ed.* 4. *f.* 28 *Mich* 22 *Ed.* 4.

A Man bound to his good Behaviour is arreſted on Suſpicion of Felony, and eſcapes, that is a Misbehaviour, tho' it does not appear that any Felony was committed. *Paſch.* 26 *El. Godb.* 22. *Pl.* 31.

Procuring another to break the Peace is a Forfeiture of the Recognizance for the Peace. *Br. New Caſes, f.* 77. *Pl.* 351.

Words which amount to a Breach of the good Behaviour ought to be ſuch as tend to the Breach of the Peace, or otherwiſe it is not a Breach of the good Behaviour, by the Opinion of *Montague*, Chief Juſtice, and *Haughton* and *Chamberlain*, Juſtices. *Mich.* 18 *Ja.* 1. 2 *Rolle's Rep.* 199. *Stamp & Hyde's* Caſe.

Sureties of the Peace. See Peace.

THIS is very near of kin to the good Behaviour, and therefore I have placed them together; for the good Behaviour includeth the Peace, and ſomething more.

One Juſtice may take Sureties for the good Behaviour as well as for the Peace; tho' this is not uſual, unleſs it be to prevent ſome great and ſudden Danger, eſpecially againſt a Man that is of any good Eſtate, Carriage, or Report. And therefore one Juſtice ought to be very cautious how he grants it, at the Inſtance of any ſingle Perſon, for generally it ought to be at the Inſtances of diverſe credible Perſons. *Dalt.* 291.

Sureties for the Peace are granted upon the Parties Oath.

But Sureties for the Peace are generally demanded by the Juſtice at the Inſtance of the Party; and before he grants it, he is to adminiſter the following Oath to him or her who requires it.

The Oath.

YOU do ſwear, That you are in Fear of your Life, or of ſome bodily Hurt to be done, or to be procured to be done you by A. B. *&c. and that you do not require the Peace of him for any Malice, Vexation or Revenge, but for the Cauſes aforeſaid.*

This being done, he may grant his Warrant to bring the Party before him, &c.

The Warrant.

Eſſex, ſſ. *WHereas* A. B. *of*, &c. *hath this preſent Day made Oath before me, that he is afraid that* C. D. *of*, &c. *will beat, wound, maim, or kill him, and hath therefore prayed Surety of the Peace againſt him: Theſe are therefore to Command you to cauſe the ſaid* C. D. *to come before me, or ſome other Juſtice of the Peace for this County to find ſufficient Security, as well for his perſonal Appearance at the next General Quarter Seſſions of the Peace, to be holden for*, &c. *then and there to abide, and do what ſhall be enjoin'd him by the ſaid Court; as alſo in the mean time to keep the Peace, and eſpecially towards the ſaid* A. B. *And if the ſaid* C. D. *ſhall refuſe ſo to do, that then you convey him to the Gaol aforeſaid, and deliver him ſafely to the Keeper thereof; Commanding you alſo the aforeſaid Keeper, to receive the ſaid* C. D. *into your Cuſtody, and him there to keep, until he ſhall find ſuch Security as aforeſaid.*

If this Warrant is directed to a ſworn Officer, he need not ſhew it to the Party, but he ought to tell him the Contents, and may break open Doors to take him. *Dalt.* 404. And 'tis grantable againſt theſe following.

Againſt whom Sureties of the Peace are grantable.

Feme Covert. } But ſhe is not to be bound, only the Sureties.

Husband. } 'Tis grantable againſt his Wife, and upon Oath.

Impotent. } For he may procure another to do the Injury.

Infant. — But he is not bound, only his Sureties.

Lunatick. — Having *Lucida Intervalla.*

Wife. — Againſt her Husband.

Cinque-Ports. } Not by Juſtices againſt one living there, but by a Writ out of the Chancery, directed to the Conſtable of *Dover-Caſtle*, and to the Lord Warden of the *Cinque Ports.*

Lord or Peer. } Not by the Juſtice, but by *Supplicavit* out of Chancery, directed to the Sheriff.

Theſe following are Forfeitures of the Recognizance for keeping the Peace.

Affray, Aſſault and Battery.	Being in it.
Breach of the Peace.	Doing any Thing which tends towards it, or procuring ſuch Act to be done.
Dog.	To take away a Dog, or any thing of Pleaſure in my Preſence, with Force and Violence.
Impriſonment.	Without Warrant.
Threatning.	By Words which may ſtir up Blows, or threatning Witneſſes; or to beat the Perſon at whoſe Suit he is bound. *Latch.* 5.
Goods.	Taking them wrongfully from the Owner's Perſon.
Officer.	Striking any Man in the Execution of his Office.

The Juſtice is Judge both of the Sureties, and the Sum, &c.

The Juſtice is Judge as well of the Sureties, as in what Sum to bind them, how long they ſhall ſtand bound, and of other Circumſtances; but it muſt be mention'd in the Condition that 'tis to preſerve the Peace, and that the Party ſhall appear at next Seſſions, where the Juſtice muſt certify the Recognizance that the Party may appear; if he neglects, he forfeits 10 *l.*

When a Man is thus bound before the Juſtice of Peace, if he that complains, ſhall afterwards make Oath above, that he is in Danger, and prayeth Surety of the Peace, there he ſhall have it; but then a *Superſedeas* muſt go to the Juſtice of Peace below, who took the Recognizance, to diſcharge it below.

An Indictment will not lye upon the Breach of this Recognizance; but a *Scire Fac. Raymond* 196.

Doing any Act which is a Breach of the Peace, or procuring it to be done, is a Forfeiture of the Recognizance.

Doing any Act which may tend to the Breach of the Peace, or procuring another to break the Peace, will be a Forfeiture of the Recognizance aforeſaid: But this Recognizance cannot be diſcharged even by Releaſe of the Party himſelf, becauſe the Conuſor is bound to the King, and to keep the Peace in general,

ral, though by the Death of the King, or the Death of the principal Conuſor, it is diſcharged of courſe; the Death of the Sureties will not diſcharge it, for if forfeited, their Executors are liable. *Roll.* 199.

If he which is bound to the Peace break his Recognizance, he may be indicted for it, for it is a new Offence. *Style* 369.

Bound to the Peace, or Good Behaviour, upon Malice or Vexation, may be diſcharged by the King's Bench. *Style* 364.

Bound to the Peace, or good Behaviour, may be diſcharged by B. R.

The Seſſions being a Court, may demand Sureties of the Peace, or Good Behaviour, againſt one Single Juſtice; ſo out of Seſſions one Juſtice may againſt another. *Dalt. c.* 80. *Sed quære.*

Eccleſiaſtical Perſons may be arreſted for the Peace, if they be not celebrating Divine Service, and if ſo, they cannot. *Vid. Stat.* 1. *Ri.* 2d. *Co.* 12. *Rep.* 100.

Sheriffs, Coroners, *&c.* may be bound to the Peace.

A Juſtice upon Demand may grant the Peace againſt his own Wife. *Dalt. c.* 80.

If a Man be bound to the Good Behaviour, and to appear at the next Aſſizes, yet he may remove the Recognizance by *Certiorari* into the Chancery, or the King's Bench before the Day, and then he need not appear at the Aſſizes; for the Judges having no Record before them there, cannot call him.

One bound to the Good Behaviour, and to appear at Aſſizes, may remove it by Certiorari.

If the Peace be required towards a particular Perſon, as well as generally towards all the King's Subjects, then the Party may be continued by the Seſſions for half a Year or more; but if it be not at the Inſtance of a particular Perſon, then he may be diſcharg'd the next Seſſions, if no Body appear againſt him.

The Conſtable when he has a Warrant, ought firſt to acquaint the Party with the Matter, and charge him in the King's Name to go before the Juſtice; and if he refuſe either to go, or to find Sureties, may arreſt him, and carry him to the Gaol, without bringing him before any Juſtice; and then ſuch Officer ought to deliver in his Warrant at the next Seſſions, and to certify all he did thereupon: If there be no ſuch Refuſal, the Officer when he has arreſted him, is not bound to go with him to find Sureties, but may detain him until he procure them: and upon Offer of Reſiſtance, or Departure, he may be carried to the Gaol, or impriſon'd in the Stocks,

The Conſtable muſt execute his Warrant.

till further Aid be provided, &c. to convey him to, &c.

The Juſtice is not bound to demand Sureties, but being brought before him, if he hath no Sureties ready, or upon Refuſal, he may be carried to Gaol by the Officer, without any new Warrant, or Command.

If the Officer arreſt the Party, and bring him not before a Juſtice, or upon Refuſal, &c. to the Gaol, he may be puniſh'd by indictment for his Neglect, and at the Party's Suit for falſe Impriſonment.

If Sureties are put in, Juſtice to grant a Superſedeas.

If another Juſtice than he who granted the Warrant, accept Sureties, &c. he muſt upon Requeſt make a *Superſedeas*; but this does not diſcharge the firſt Warrant until the Party be bound indeed. *Lamb.* 98.

Perſons may give Sureties voluntarily.

A Perſon ſuſpecting that the Peace is, or will be demanded againſt him, may go to a Juſtice, and there voluntarily give Sureties, and procure a *Superſedeas*, &c.

After a *Superſedeas* deliver'd to the Officer (tho' it contains neither the Sureties Names, or the Sum) yet may he neither arreſt or detain the Party; and if he does 'tis falſe Impriſonment.

Notwithſtanding Superſedeas, Juſtice muſt certify the Recognizance to next Seſſions.

On Receipt of a *Superſedeas*, either from the Chancery, or King's Bench, the Juſtice may ſuperſede his own Warrant; which *Superſedeas* may be procured out of Chancery in the Vacation; and for not obeying it, though awarded againſt himſelf, an Attachment may iſſue againſt the Juſtice; and notwithſtanding ſuch a *Superſedeas*, the Juſtice ought to certify the Recognizances (if he have taken any) to the next Seſſions.

It has been held, that a *Certiorari* to remove a Recognizance for the good Behaviour, or for an Appearance at Seſſions, will ſuperſede its Obligation. 2 *Roll. Abr.* 492. *Dalt. c.* 75.

But this would be inconvenient, and the contrary Opinion ſeems ſupported by the better Authorities. *Cro. Ja.* 282. *Yelv.* 207. 1 *Bulſt.* 153. *Hawk. P. C. part* 2. 294.

Superſedeas in Court void unleſs granted on Motion in open Court.

Every *Superſedeas* out of Chancery, or King's Bench, is void unleſs granted upon Motion in open Court, and the Sufficiency of the Sureties muſt appear, and that the Peace was demanded *bona fide* upon Oath. 21 *Jac. c.* 8.

If he who is bound to keep the Peace hath broken it, and forfeited his Recognizance, the Juſtice ought

to

to bind him anew, but that muſt not be done before the Party be convicted of a Breach of the Peace upon his Recognizance.

If Recognizance be to keep the Peace without naming how long, 'tis for Life.

If the Recognizance be made to keep the Peace generally without any Time or Day limited, it ſhall be conſtrued to be during the Party's Life. *Lamb.* 113.

One Thouſand Pounds Recognizance may be required for the Peace (as the Caſe may be) *viz.* If the Perſon be ſo dangerous, and if he which is bound to the Peace, break it, and forfeit his Recognizance, he may be indicted for it, for it is a new Offence. *Style* 322, 369.

Juſtice may take Money as a Depoſitum.

A Juſtice may take Money to lye *in Depoſito* for Security of the Peace; and if the Party break the Peace, the Money to be forfeited to the King. 1 *Cro.* 446.

Mittimus ought to expreſs what Sum.

The Warrant of Commitment for not finding Sureties for the Peace, ought to expreſs in what Sum the Perſon is required to find Sureties, otherwiſe it may be ſo exceſſive, that any Perſon may be conſtrained to remain in Priſon. 2 *Vent.* 22.

Sureties may be required by Word of Mouth againſt one preſent.

Sureties for the Good Behaviour, or Peace, may be requir'd by Word of Mouth againſt one that is preſent. The Juſtice may command the Sheriff, his own, or any other indifferent Man, or the Conſtable, to take the Party into Cuſtody; and if he refuſe to find Sureties, to carry him to Priſon: But if the Party be abſent, he muſt ſend his Warrant in Writing.

What Form of Recognizance is good.

The Condition of the Recognizance is uſually to keep the Peace, or Good Behaviour againſt all Men, and eſpecially *A. B.* till the next Seſſions, and then to appear; this is the beſt Form: But if againſt all Men only, or againſt *A. B.* only, it be to keep the Peace, *&c.* and not to appear, or ſay not when, or before whom to appear; or if it be to appear at another, not the next Seſſions; or to keep the Peace, and ſet down no Time; or for a Year, or for Life; theſe are good. *Lamb.* 103, 104.

Not ſafe for Juſtice to bind to the Good Behaviour on a general Information.

It is not ſafe for a Juſtice to bind a Man to the Good Behaviour, or ſend him to Priſon for his Refuſal to be bound upon a general Accuſation, or Information, that a Man is a Perſon of ill Name, *&c.* without Information upon Oath. And yet if a Juſtice require Surety of me in ſuch a Caſe, I muſt give it; but if I ſhall be committed to Priſon in this Way for Refuſal, I may be deliver'd on my *Habeas Corpus* in the King's Bench, *Style* 16. And perhaps an Action of

falſe

falſe Impriſonment may lye againſt the Juſtice for it. It therefore behoves the Juſtice to be wary herein. *Paſ.* 23 *Car. B. R.*

If a Juſtice of Peace certify into the King's Bench, that ſuch a Man broke the Peace in his Preſence, the Party ſhall be put to his Fine without any Traverſe. *Cr.* 132. *a.*

H. B. will not grant Superſed. but Ha. Corp. where one is bound to good Behaviour not obeying Juſtices Order.

Where a Man was bound to the Good Behaviour, by Juſtices of Peace, for refuſing to obey their Order, it was held by the Court, that they ought not to grant a *Superſedeas* in that Caſe, but they might grant a *Habeas Corpus*, and diſcharge him. *Bendl.* 361. *Blacknel's* Caſe.

If Sureties be at the Suit of a particular Perſon he may releaſe it.

If Sureties for the Peace be taken at the Suit of a particular Perſon, then he alone may releaſe it before the Day of Appearance; But tho' this Releaſe is certified with the Recognizance as it ought to be, yet it doth not diſcharge the Appearance of the Party, becauſe he is bound to the King, and likewiſe to appear, as well as to keep the Peace, which cannot be diſcharged by the Releaſe of the Party; and therefore he ought to appear at the next Seſſions.

If he break his Recognizance, 'tis a new Offence, and he may be indicted for that.

The Releaſe to be written under the Condition of the Recognizance.

MEmorand. *That the aboveſaid* A. B. *came before me* J. S. *Eſq*; *on the 9th Day of this Inſtant* October, *and did, as much as in him lay, freely releaſe the ſaid Security of the Peace formerly deſired by him, as abovementioned, againſt the above-bounden* A. B. *In witneſs whereof I have hereunto ſet my Hand and Seal, the ſaid 9th of* October, &c.

But without ſuch a Releaſe it may be diſcharged:

By the Death of the King.

By the Death of the principal Conuzor: But the Recognizance muſt be certified.

But the Death of the Sureties will not diſcharge it; for if forfeited, the Executors are liable.

The

The Writ of Supplicavit.

THIS Writ is in Effect an Accuſation of the Juſtices below, as if the Party could have no Relief of them, and therefore was forced to apply himſelf to the Courts at *Weſtminſter*. The Writ what.

This Writ may be granted either out of the Chancery, or King's Bench; but in regard it is now but little uſed, I ſhall ſay but little of it, only that it is enacted by 21 *Ja.* 1. *c.* 8. That all Proceſs of the Peace, or Good Behaviour, to be granted out of the Chancery, or King's Bench, againſt any Perſon whatſoever, at the Suit of any other, ſhall be void, unleſs ſuch Proceſs ſhall be granted upon Motion firſt made in open Court, and upon Declaration in Writing upon Oath then exhibited of the Cauſes for which ſuch Proceſs ſhall be granted; and unleſs ſuch Motion and Declaration be mention'd to be made upon the Back of the Writ, and entred in the ſaid Courts of Record. And if after it ſhall appear to the ſaid Courts, that the ſaid Cauſes expreſſed in ſuch Writing be untrue, then the Courts may award Coſts and Damages to the Party grieved, and may alſo commit to Priſon the Offenders until they pay the ſaid Coſts and Damages. Where granted. 21 Ja. c. 8. 2 Cr. 456. 669. Godbolt. How obtained.

But this Method being very chargeable, troubleſome, and tedious, I ſhall not here trouble my Reader with the Method of executing and returning this Writ by the Juſtice of Peace, in which he is only a miniſterial Officer: Whoever has a Curioſity that Way may read it at large hereafter, Title *Supplicavit*.

The Party may alſo move the Court for a *Superſedeas*; but this muſt be upon a *Supplicavit* only, and not where the Juſtice proceeds *ex officio*, becauſe by the Stat. 21 *Ja.* 1. *c.* 8. it muſt appear to the Court that Proceſs of the Peace, or Good Behaviour, is required againſt the Offender in that Court, by the Party grieved, out of which the *Superſedeas* is deſired. Superſedeas, how obtained.

A Mit-

A Mittimus for Breach of the Peace.

Eſſex, ſſ. I *Herewith ſend you the Body of* T. P. *of*, &c. *whom I charge and require you to take into your Cuſtody, for ſeveral Miſdemeanors committed by him againſt the Peace; and you are hereby required to keep him the ſaid* T. P. *ſafely in the common Gaol until he ſhall procure two ſufficient Perſons to be bound with him in a Recognizance to the King's Majeſty; that is to ſay, each of the ſaid Sureties in the Sum of* 10 l. *and himſelf in* 20 l. *to appear at the next General Quarter-Seſſions of the Peace, to be holden*, &c. *and in the Mean Time to be of the Good Behaviour: And hereof fail not.* Given *under my Hand and Seal*, &c.

A Superſedeas of the Peace.

Eſſex, ſſ. WHereas A. B. *having made Oath before*, &c. *That* C. D. *of*, &c. *had threaten'd to beat or wound him the ſaid* A. B. *and the ſaid* C. D. *being by Virtue of a Warrant granted by the ſaid*, &c. *this Day brought before me for the Miſdemeanor aforeſaid, and hath entred into Recognizance with* E. F. *and* G. H. *in the Sums of*, &c. *for his perſonal Appearance before the Juſtices of the Peace, at their next General Quarter-Seſſions to be held*, &c. *and in the mean Time to keep the Peace towards his Majeſty, and all his People; but eſpecially towards the ſaid* A. B. *Theſe are therefore in his Majeſty's Name, to command you, and every of you, to forbear to arreſt, impriſon, or otherwiſe moleſt the ſaid* C. D. *for, or by Reaſon, or Means of the Miſdemeanor aforeſaid; and if he ſhall be already taken, or impriſon'd for the ſame, that then you cauſe him to be forthwith diſcharged.* Given, &c.

Bigamy. See Felony.
Billets. See Fuel.

Blaſphemy.

9 & 10 W. 3. EVery Perſon bred in, or profeſſing the Chriſtian Religion, and who ſhall by Writing, Printing, Teaching, or adviſed Speaking, deny any one of the Perſons in the Trinity to be God; or aſſert that there are

are more Gods than one; or deny the Chriſtian Religion to be true; or the Holy Scriptures to be of Divine Authority, and be convicted thereof by Indictment or Information at *Weſtminſter*, or at the Aſſizes, ſhall be diſabled to have any Office, and that Office which he hath ſhall be void.

If convicted a ſecond Time, he ſhall be diſabled to ſue in any Court, or to be a Guardian, or Executor, or Adminiſtrator, and be incapable of any Legacy, or Gift, or of any Office; and ſhall be committed for three Years without Bail.

Conviction muſt be by Oath of two credible Witneſſes. The Information for Words ſpoken, muſt be on Oath before a Juſtice of Peace within four Days after ſpoken, and the Proſecution muſt be within three Months after the Information. But if the convicted Perſon for the firſt Offence, ſhall within four Months after his Conviction, acknowledge and renounce the ſame in that Court where he was convicted, he ſhall be diſcharged from the ſaid Penalties.

Information for Words muſt be in 4 Days after ſpoken, and Proſecution in 3 Months after Information. If convicted Perſon recant in four Months after Conviction, he ſhall be diſcharged. 7 Ann. c. 14.

One *T.* was proſecuted for uttering divers blaſphemous Expreſſions execrable to hear, of our Bleſſed Saviour and Redeemer Jeſus Chriſt, and that Religion was a Cheat, and that he neither feared God, the Devil, or Man: On his Trial, *Hale* ſaid that ſuch kind of blaſphemous Words were not only an Offence to God and Religion, but a Crime againſt the Laws, State, and Government; for to ſay Religion is a Cheat, is to diſſolve all thoſe Obligations whereby civil Societies are preſerved, and that Chriſtianity is Part of the Laws of *England*; and therefore to reproach the Chriſtian Religion is to ſpeak in Subverſion of the Law. He was ſentenc'd to ſtand in the Pillory in three ſeveral Places, to pay one thouſand Marks, and to find Sureties for his good Behaviour during his Life. 1 *Vent. Rep.* 393. *Taylor's* Caſe.

Books.

ONE Juſtice may grant a Warrant to ſearch for any Book taken out of any Parochial Library, which if found, ſhall be immediately reſtored again, or it ſhall be lawful for the Parſon, or any other Perſon,

One Juſtice may grant a Warrant to ſearch for a Book taken out of a Parochial Library.

Person, to bring an Action of Trover and Conversion. *Vide* the Act 7 *Ann. c.* 14.

This Act not to extend to the publick Library at *Ryegate* in *Surrey*.

Brandy. See Alehouses and Customs.
Bread. See Weights and Measures.

Brewers, &c. and Excise.

Brewer must not be a Cooper.

BY Stat. 23 *Hen.* 8. a Brewer is prohibited to be a Cooper; and if he maketh a Vessel not marked by a Cooper, and puts Beer therein, he forfeits three Shillings and four Pence.

By 12 *Car.* 2. *cap.* 23.

The Ale	Barrel must contain	32	Gallons,
	Kilderkin,	16	
	Firkin,	8	
The Beer	Barrel must contain	36	Gallons,
	Kilderkin,	18	
	Firkin,	9	

within *London*, and the Weekly Bills of Mortality, but in all other Parts of *England* 34 Gallons shall be accounted a Barrel of Beer or Ale, whether strong or small, by 1 *W. & M.*

The Duties of Excise.

By the same Statute the Parliament gave the King,
For every Barrel of Beer or Ale, above 6 *s.* the Barrel, 1 *s.* 3 *d.* brewed by any that sell the same, to be paid by the Brewer.
For every such Barrel of 6 *s.* or under, 3 *d.*
For a Barrel of Vinegar Beer, brew'd by a common Brewer, 6 *d.*
For every Hogshead of Cyder and Perry, sold by Retail, 1 *s.* 3 *d.*
For every Gallon of Metheglin, or Mead, one Halfpenny.
For a Gallon of Strong-Water, to be paid by the Maker, 1 *d.*
For a Barrel of Beer or Ale, imported from beyond Seas, 3 *s.*
For a Ton of Cyder or Perry imported, 5 *d.*

For a Gallon of Spirits made of Wine, or Cyder, imported, 2 *d.*
For a Gallon of Strong-Water, imported, 4 *d.*

The ſaid Duties ſet on Foreign Liquors imported, to be paid by the Importer before Landing.

By the 22 *Car.* 2. *cap.* 4. Brandy is charged with 8 *d. per* Gallon.

Theſe Duties, among others, were for Life. The next Year Tenures *in Capite*, and the Courts of Wards and Liveries, *&c.* were aboliſh'd; and in lieu thereof, the Parliament gave the King, his Heirs and Succeſſors, the like Duty.

Theſe were confirmed by Stat. 13 *Car.* 2. *c.* 7. and further explained by 15 *Car.* 2. *cap.* 11 & 12. & 16 & 17 *Car.* 2.

But theſe Duties being determin'd by the Death of that King, the Parliament by Stat. *Jac.* 2. *cap.* 1. ſettled them on K. *James* 2. for his Life.

Afterwards, by Stat. 1 *Will. & Ma. cap.* 24. *Seſſ.* 1. an additional Duty of 9 *d.* for every Barrel above 6 *s.* and 8 *d.* and under that Value 3 *d.* was given to them.

By Stat. *Anno* 2 *Will. & Ma. cap.* 3. the Duties formerly given to K. *Charles* and K. *James* 2, were given to K. *William* and Q. *Mary* for their Lives.

By Stat. 4 *W. & M. cap.* 3. the Additional Duty of 9 *d. per* Barrel was ſettled for 99 Years, as a Fund for a Million of Money, *&c.*

By Stat. 1 *Ann. cap.* 7. the Exciſe was ſettled on Q. *Anne*, during her Life, under ſome Reſtrictions. *Vide* the Act.

By Stat. 8 *Ann.* a further Duty of 3 *d. per* Barrel, on every Barrel of 6 *s.* and of 1 *d.* on every Barrel under 6 *s.* was impoſed for 32 Years from *Lady-Day*, 1710.

By Stat. 1 *Geo. cap.* 1. the Exciſe was ſettled on His late Majeſty K. *George*, during his Life.

Common Brewers muſt make Entry at the Exciſe-Office weekly, and Inn-keepers muſt do it monthly, on Penalty of 5 *l.* for a Brewer and Inn-keeper, and 20 *s.* for an Alehouſe-keeper, *&c.* But note, by *Ch.* 24. Brewer forfeits 10 *l.* and Inn-keeper 5 *l.* and Alehouſe-keeper 20 *s.* as before; and for not paying and clearing off within a Week and a Month after Entry made, to pay double Value of the Duty. Commiſſioners to appoint Gaugers, who may, on Requeſt, enter into Houſes to gauge the ſaid Liquors; if in the Night,

12 Car. 2. c. 23 & 24. Brewers and Inn-keepers.

Night, must take a Constable with them. Brewer, or, &c. refusing to suffer Gauger to enter and gauge, shall be forbidden to sell such Liquors 'till Excise paid, on Penalty of double Value of such Liquors sold, beside 5 *l.* by *Ch.* 24. Allowance to be made Brewers of three Barrels in every 23 of Beer, and two Barrels in 22 of Ale, for Waste and Leakage; but this is now by Stat. 1 *W.* & *M.* reduced to two and one Half, within the Bills of Mortality. Brewer making false Entry, shall lose, besides Penalties aforesaid, the Allowance for Leakage for six Months. No Ale or Beer to be delivered to Retailer before Excise paid. Ale, &c. sold in Fairs, shall pay Duty by Brewer, or Retailer. Commissioners in *London*, and two Justices in any other Cities or Counties, have Power to hear and determine Offences. In Case Justices neglect, or refuse for 14 Days, then Sub-Commissioners may do it. Party offending may appeal to Quarter-Sessions, whose Judgment shall be final. Proof by Confession, or Oath of one Witness. Penalty to be levied by Distress and Sale, if not redeemed in 14 Days; for want, Imprisonment 'till Satisfaction made. *Note*; Forfeitures may be mitigated, but not less than double Value of Duty of Excise that should have been paid. Forfeitures, after Charges deducted, shall be employ'd three Parts to the King, fourth to Informer. See the Oath for Officers of Excise to take, which must be certified by Justices to next Quarter-Sessions.

By 15 Car. 2. False Entry is rectified in a Week, no Penalty. 7 & 8 W. 3.

Confession, or one Witness.

Sellers of Beer, &c. shall not set up or alter any brewing Conveniencies, without Notice to the Excise-Office, on Penalty of 50 *l.* but by Stat. 8 *Will.* 3. *cap.* 19. this Penalty is increased to 200 *l.* And for every conceal'd Tun, Fat, &c. discovered, forfeit 50 *l.* together with the Beer, &c. which shall be for the Use of the Poor. Gauger shall give Brewer, a Week after Entry made, a Copy under Hand of his Report made to Commissioner, or Sub-Commissioner, on Pain of 40 *s.* Brewer may rectify false Entry within a Week. No Commissioner, Farmer, or Sub-Commissioner, shall act as a Justice to execute this Act. If the Brewers do not carry out their Drink within the Hours limited by the Act, *qd. vid.* forfeit 20 *s.* a Barrel, to be levied and recovered as before. Brewers mixing Worts after Gauger has taken an Account, without giving Notice to Gauger; or for concealing any Wort, forfeit 20 *s.* *per* Barrel.

15 Car. 2. c. 11. 8 W. 3. c. 19. Conviction by two Witnesses before two Justices.

Brewer compounding for Duty of Excise, shall not permit any other Brewer to brew any Drink in his Brew-house, without giving Notice to Officers of Excise, on Pain that as well the Brewer who shall brew the same, as the Brewer for whom the said Beer shall be brew'd, shall forfeit for every Barrel 5 *l.* to the King, and Informer.

Sellers of Coffee, Tea, Chocolate, Sherbet, shall be licensed by Justices at Quarter-Sessions, Certificate being first shewed that they have given good Security for Payment of Dues to the King, or chief Magistrate where they inhabit, on Penalty of 5 *l.* a Month, for selling without License. 15 Car. 2. c. 11.

Two able Gaugers shall be appointed, one by Commissioners, the other by the Brewers, to gauge all Tuns, &c. Gauger shall take no Bribes, of, &c. to make false Returns, nor Brewer give any, on Penalty of 10 *l.* to be proved by two Witnesses upon Oath, before two Justices, or chief Magistrate in Town Corporate, to be levied by Distress, &c. for want, of which Imprisonment for three Months, without Bail. Gaugers. Two Witnesses on Oath before two Justices.

No foreign Liquors to be landed before Entry made, and Excise paid, on Forfeiture of the Liquors, or Value, to King and Informer, to be recovered of Importer or Proprietor. No Person shall bring on Shore any excisable Liquors, except Beer, Cyder, Perry, and Metheglin, into any Part of *England*, by Coast Cocquet, *Transire*, or Certificate, 'till Entry be made, on Forfeiture of double the Value. No Appeal before single Duty of Excise be laid down, and Security given for Payment of Forfeitures, if recover'd: If Cause go for the Appellant, then Money so deposited shall be restored; double Costs to be paid by either Side, against whom the Cause goes. No foreign Liquors landed before Duty paid. No Appeal before single Duty laid down.

Persons making Beer-Vinegar, shall pay Excise. Colleges exempted from Excise. Two Justices may sit once a Month to hear, &c. Offences. Third Part of Forfeitures not before disposed of, for the Poor, the other for the King, the other to Informer. Appeals in *London*, or Limits, in two Months; in any other County in four. After first Judgment given, Notice to be given to Party concern'd. Appeals, &c. to be determin'd in the proper County. Appeals in London in two Months, in the Country in four.

Commissioners, or any other Persons concerned under them, shall keep an Office in every Market-Town, and attend there every Market-Day, to receive Entries, and Duties of Excise, on Penalty of 10 *l.* Brewer, or Retailer, &c. using Molasses, coarse 1 W. & M. c. 24.

Sugar, Honey, &c. for Ale or Beer; or having in Custody above the Quantity of ten Pounds, forfeit 100 *l.*

5 & 6 Will. & M. c. 5. Servants, or others being Accessary, &c. 20 *l.* for Default of Payment, three Months Imprisonment.

7 & 8 Will. & Ma. c. 30. Makers of Vinegar, Cyder, Mead, or Sweets for Sale, concealing, or conveying them away from Gauger, forfeit 40 *s.* a Barrel; and so proportionably for every Gallon so hid, &c. Refusing to let Gauger take Account, forfeit 5 *l.* Brewers of Vinegar, or Sweets, carrying out to Customers without Notice to Officers, forfeit 40 *s. per* Barrel. Persons concealing Tuns, Casks, &c. forfeit 50 *l.* Brewers, &c. brewing a Party-Guile, shall declare to Gauger how much intended for Strong, and how much for Small Beer; on Refusal, must pay Duty for all Strong, besides 20 *s.* a Barrel for every Barrel contain'd in such Guile; and for increasing Strong-Beer, after declaring, as aforesaid, forfeit 5 *l.* a Barrel; and so proportionably, &c. Servants concern'd in such Increase, forfeit 20 *s.* and in Default of Payment, three Months Imprisonment. 50 *l.* Penalty on Brewers, &c. if they hinder Gauger from coming into Brew-houses in the Day, or in the Night, if with a Constable, or to stay there, and hinder him from executing his Office, &c. Brewer mixing Small-Beer with Strong, after carried out.

8 & 9 Will. 3. c. 18. Every Person making or keeping any Wash-Cyder, &c. fit for Distillation, and having in his Possession, any Still of 20 Gallons, or upwards, on Proof before a Justice on Oath, shall be deemed a common Distiller. 8 *W.* 3.

Commissioners of Excise, and Justices respectively, on any Information before them against the Laws of Excise, may summon any other than the Party accused, to give Evidence, &c. on Refusal, shall forfeit 10 *l.* in manner as before directed; Forfeiture to King and Prosecutor.

Informations, &c. may be heard by three or more Commissioners. And by an Act 1 *G.* 2. All Complaints and Informations which shall be depending at the chief Office of Excise, may be heard and determin'd by any three or more of the Commissioners, and it shall be sufficient in the written Account of such Proceedings, to mention that such Complaints or Informations are made and exhibited to three of such Commissioners, without particularly mentioning their Christian and Sirnames; and every Adjudication and Determination of three Commissioners shall be good and valid in Law.

Every

Every such Adjudication and Determination shall be executed by a Warrant under the Hands and Seals of any three Commissioners, whether such Commissioners setting their Hands and Seals to such Warrant, shall not happen to be the particular Commissioners by whom the Adjudication or Determination shall be made; or whether such three Commissioners were Commissioners at the Time when such Adjudication shall happen to be made; provided that the Persons so setting their Hands actually are Commissioners.

Every Determination shall be executed by Warrant of three Commissioners.

Commissioners not doing their Duty, forfeit their Places, and made uncapable of any other, and must make good any Sums misapplied, to any that will sue for the same. Brewers having a private Pipe, or Stop-cock, &c. by which any Beer, &c. may be conveyed and concealed in any Tun, Batch, &c. forfeit 100 *l.* Brewer altering or setting up any Tun, Batch, Cooler, &c. without Notice to Officer of Excise, forfeits 200 *l.* Brewer, or Cyder-maker, delivering to Distiller or Vinegar-maker, any Wash, &c. without Notice to Gauger, forfeits 20 *s.* 8 & 9 *W.* 3. *c.* 18.

Commissioners not doing their Duty forfeit their Places, &c.

Gauger to keep an Account of Liquors made by Distillers. Gaugers, &c. making a false Charge, forfeit for every Gallon so charged, 10 *s.* Gauger may take off the Heads of Stills, and examine them, if they are at work, to stay till they are wrought off. Gauger to gauge all Wash found in Distillers Houses. Gauger missing in 24 Hours any Liquor he had before gauged, not receiving on Demand Satisfaction about it, may charge Distiller with so much Low-Wine as such Liquor, &c. so missing, &c. wou'd in his Judgment have made.

10 & 11 Will. 3, 3, 21. Gaugers.

Gaugers may taste the Drink on any Brewer's Dray, and may also enter into any Inn-keeper's, &c. Cellar, to taste the Drink, that takes any of a common Brewer. Inn-keepers, &c. refusing them so to do, forfeit 5 *l.*

Gauger to leave with Brewer, &c. a Copy of the Charge made on him within three Days after the End of every Week; Gauger refusing, or neglecting to leave such Charge, &c. forfeits 10 *l.* or that shall charge more on Brewer, &c. than such Copy left contains. Gauger leaving Copy of Charge, as aforesaid, shall not be liable to any Penalties in any other Act, for not leaving Notes, &c. Officers suspecting any private Back, Tun, &c. may break open Brew-House Doors, &c. enter and search; Owner opposing, forfeits 20 *l.* If no such Pipe found, Officer to make

Gauger must leave a Copy of his Gauge with Brewer.

good the Ground, or make the Owner such Satisfaction as two Justices, *Quorum unus*, shall adjudge; or Party may bring his Action. Penalties in this Act to King and Informer, to be recover'd by any Law of Excise, or by Action of Debt, &c. Notes of every Gauger shall be left with Brewer, &c. by Gauger, containing Inches and Tenths of Backs and Warts of the Tuns, and Quantity of the Liquors, on Penalty of 40 *s.*

Distillers are to make Entries of Warehouses, &c.

By Stat. 6 *Geo.* 1. *ch.* 21. all Distillers, and Makers, and Sellers of Brandy, and Strong-Waters, or Spirits, are to make Entries of all Ware-houses, and the Brandy, &c. therein, at the next Office of Excise, under the Penalty of 20 *l.* and Forfeiture of the Liquors; and no Brandy is to be sold, but when the same shall be in the said Ware-houses so entred, on Pain of forfeiting 40 *s. per* Gallon.

Information must be in 3 Months.

Information shall not be brought for any Mis-entry but within three Months next after the Offence committed, and Notice thereof given to the Defendant in Writing, within a Week after the Information entred. No Writ of *Certiorari* shall supersede Execution, or other Proceedings upon any Order made by the Justices, by Virtue of 12 *Ca.* 2. *ch.* 23.

Occupier of an House where any Brewer keeps a private Store-house for Liquors, forfeits 50 *l.* and the Liquors may be seized and given to the Poor.

Officer on Suspicion of private Still, may make Affidavit before a Just. of Peace, and by his Warrant break open Doors.

If Officer suspect any private Still to be set up in any House, he may make Affidavit of it before a Justice, in which he must set forth the Grounds of his Knowledge, or Suspicion, and then he may, in Day-time, as aforesaid, and by a Warrant from that Justice, before whom he made Affidavit, break open the Door, or any Part of the House, and enter and seize the Stills, and detain them in that House, or elsewhere; and if not claimed within 20 Days after the Seisure, they may be sold, one Moiety to the King, the other to the Discoverer.

But if claimed within 20 Days, then the Person claiming it, shall, for every Ware-house in which such Still shall be found, and for every Still also, forfeit 200 *l.*

But if no Still be found, then Officer must make good the House, or pay such a Satisfaction as two Justices as aforesaid shall adjudge.

Brewer suffering another to use his Brew-house.

If a Brewer suffer another to use his Brew-house, after he hath agreed for the Duty, without giving Notice thereof, and paying the Excise, the Brewer,

and the Person for whom the Drink is brewed, forfeits 5*l.* for every Barrel to the King and Informer.

One Justice hath Power to administer an Oath to Officers, to make a Charge on Hops.

Pickers, or Gatherers of Hops, and others, privately conveying Hops from the Place of Growth, or where they are plac'd, in order to be cur'd, bagg'd, and weigh'd, shall forfeit 5*s.* for every Pound, to be levied by Distress and Sale; and if no Distress, the Offender is to be committed to the House of Correction, not exceeding a Month. 9 Ann. c. 12. Hop-Gatherers privately conveying them away.

And if any Person shall obstruct, or abuse the Officer in his Duty, he shall forfeit 5*l.* to be levied *ut supra.* 9 *Ann. c.* 12.

Justice of Peace may commit a Brewer for not paying the Duty of Excise. 1 *Mod. Rep.* 102.

Indictment against a Brewer for selling Ale to an unlicens'd Alehouse-keeper. 29 *Car.* 2. *B. R.*

Information on the Stat. 5 *Eliz. c.* 4. against a Brewer, *Cro. Ja.* 178. None ought to be a common Baker or Brewer, unless he has been an Apprentice 7 Years. 12 *Co.* 12.

The Oath of an Officer of the Excise may be administred by two Justices; the Oath to be certified at the next Sessions, there to be recorded.

No Officer of the Excise shall be a Justice of the Peace.

The Act of 39 *Eliz.* intitled, *An Act to restrain the excessive making of Malt*, is repeal'd; and all Orders made by Justices of Peace, for restraining Malsters from making Malt, are vacated by Stat. 9 and 10 *W.* 3. *c.* 22. Stat. 39 Eliz. is repealed by 9 & 10 W. 3 c. 22.

The Proprietors of any private Still, Back, or other Vessel, or the Person in whose Custody the same shall be found, shall forfeit for every such Still, &c. 200*l.*

The Justices of Peace upon any Information for an Offence against the Excise, may summon any Person, other than the Party accused, to appear before them, to give Evidence; and the Person making Default, forfeits 10*l.* to be recovered by Action of Debt, &c. in the Courts of *Westminster*; one Moiety to the King, the other to the Prosecutor.

A Certificate upon taking the Oath about Excise.

12 Car. 2. Cap. 23. confirmed. Cap. 24. two Justices.
(a) See the Statutes of 1 Gul. & Mar. c. 1 & 8. and Title Oaths, Post.

Essex, ss. WE *whose Names are hereunto subscribed* (*Her Majesty's Justices of the Peace of the County aforesaid*) *do certify, that* A. B. *of* C. *in the said County, hath before us* (*this present Day*) *taken the Oaths,* (a) *and the Oath mentioned in the Statute made in the Twelfth Year of the Reign of the late King* Charles 2. *intituled,* (A Grant of certain Impositions upon Beer, Ale, and other Liquors, for Increase of his Majesty's Revenue during his Life.) *Given under our Hands and Seals the Day of in the first Year of the Reign of our Sovereign Lord* George 2d, *over* England, &c.

None shall meddle with any Office relating to the Excise 'till they have taken the said Oaths before two Justices of the Peace of the County where such Office is, or one Baron of the *Exchequer*; and the Oath of an Excisman *Vide* Title Oaths, *Post.*

A Warrant to levy the Forfeiture for not making an Entry of Liquors.

12 Car. 2.

WHereas *Complaint hath been made unto us, by* A. B. *Officer of Excise, that* C. D. *of* &c. *in the County aforesaid, Common* Brewer, *hath neglected and refused to make a due Entry at the Excise-Office in,* &c. *aforesaid, of all Liquors by him brewed, from,* &c. *to,* &c. (setting forth the Time) *according to the Statute in that Case made and provided; which Complaint appearing to be true on Examination into the Matter, the said* C. D. *hath forfeited the Sum of* 10l. *to be levied by Distress and Sale of his Goods and Chattels. These are therefore in his Majesty's Name to require you to take a sufficient Distress of the Goods and Chattels of the said* C. D. *and to sell the same, if not Redeem'd within Fourteen Days next after taken, and thereby raise the said Sum of* 10l. *and when so raised and levied, that you do pay the same to such Person and Persons as is limited by the Statute, rendring the Overplus* (*if any*) *unto the said* C. D. *And if you cannot find a sufficient Distress, that then you do certify the same to us, that we may make such further Proceedings in the Premises as to Justice appertains.* Given, &c.

A War-

A Warrant to levy the double Value of the Excise on a Brewer, for not paying according to Entry made.

To the Constable and Borsholders of, &c.

Essex, ss. *Forasmuch as Complaint hath been made unto us, whose Names are hereunto subscribed (Her Majesty's Justices of the Peace of the County aforesaid) that* A. B. *of* C. *in the County aforesaid, Common Brewer, hath not paid nor clear'd off his Duty of Excise unto such Person as, by the Statute in that Behalf made, is appointed, according to the Entry of the said* A. B. *in that Behalf made, as by the Statute aforesaid is directed; and upon the Examination of the Complaint aforesaid, we find the same to be true. These are therefore (in His Majesty's Name) to Will and Require you, and every of you, that you, some or one of you, do levy the Sum of,* &c. *upon the Goods and Chattels of the said* A. B. *(being double the Value of the Duty so not paid or clear'd off, and by him forfeited, according to the Form of the Statute aforesaid;) and to sell the said Goods and Chattels (if they shall not be redeem'd within Fourteen Days;) and that you pay the Monies so levied to such Person or Persons as by the said Statute is directed, rendring to the aforesaid* A. B. *the Overplus (if any be) and for want of sufficient Distress, that you do forthwith certify us thereof, to the End that we may proceed touching the same as by Law is appointed. Hereof fail not,* &c. 12 Car. 2. ch. 23.

A Warrant against a Brewer who maketh a false Entry, by which the Allowance of Leakage is taken away for six Months.

To the Constable, &c.

Essex, ss. *Whereas* N. V. *of,* &c. *Common Brewer, hath this present Day been duly convicted before us, that he Wilfully made a false Entry of three Barrels of,* &c. *by him lately brewed, contrary to the Form of the Statute in that Case made and provided. And whereas the Allowance appointed to be made for Waste, by Filling and Leakage, are* * *three Barrels upon every Twenty-three Barrels of Beer; which Allowance, in Case of false Entry, and* and two Commissioners within the Limits of the chief Office in London. Proof by one Witness upon Oath. 15 Car. 2. c. 11. 22 Car. 2. ca. 23. * per 1 W. & M. cap. 24. 'Tis two Barrels and half within the Weekly Bills. Two Justices in the County,

Conviction thereof as aforesaid, shall be forfeited for six Months: We do therefore Adjudge, that the said N. V. *for this his Offence shall forfeit and lose the said Allowances for the Space of six Months next ensuing.* Given, &c.

A Warrant to levy 10 *l.* for Bribing an Officer of Excise to make a False Return.

To the Constables and Borsholders, &c.

15 Car. 2. cap. 11 & 12. Two Justices.

Essex, ss. FOrasmuch as it hath been duly proved before us, that A. B. of, &c. Brewer, did Bribe (or Corrupt, give Money, Fee, or other Reward, &c.) to C. D. Gauger (or other Officers, &c.) to make a false Return, or Report, unto the Office of Excise of Beer, Ale, &c. Exciſable within his Division (Charge or Walk) in the said County, or to forbear or omit the Doing or Executing of his Place or Employment, against the Form of an Act of Parliament lately made (entituled, An Additional Act for the Ordering and Collecting the Duty of Excise, and Preventing the Abuses therein) whereby he hath forfeited Ten Pounds for his said Offence. These are therefore (in his Majesty's Name) to Charge and Command you, and every of you, to levy, by Distress and Sale of the Goods of the said A. B. the aforesaid Ten Pounds, rendring to him the Overplus thereof. Hereof fail not at your Perils. Given under our Hands and Seals, the, &c.

A Mittimus to the Gaol for want of Distress.

To the Constable and Borsholders of the Hundred, &c. and to the Keeper of, &c.

15 Car. 2. ca. 11 & 12. Two Justices. 8 & 9 W. 3. 1 Lut. 499.

Essex, ss. WHereas it was duly proved before us, that A. B. of, &c. Brewer, did Bribe C. D. Gauger, to make a false Return into the Office of Excise of Beer, &c. Exciſable within his Division in the County (against the Form of an Act of Parliament lately made, intituled, An Additional Act for the Ordering and Collecting the Duty of Excise, and Preventing the Abuses therein) whereby he forfeited Ten Pounds for his said Offence: And we did therefore, by Warrant under our Hands and Seals, Charge and Command you to levy by Distress and Sale of the Goods of the said A. B. the aforesaid Ten Pounds: And you the said Constable have returned to us, that for want of such Distress you could not levy the same. These are therefore (in His Majesty's Name) to Charge and

Command

Command you, the said Constable and Borsholders, and every of you, to Attach the said A. B. and him convey to His Majesty's Gaol aforesaid, and there deliver him to the Keeper of the same, together with this Precept; Commanding also you the said Keeper to receive him into the said Gaol, and him there safely keep by the Space of three Months, without Bail or Mainprize. Hereof fail not at your Perils. Given *under our Hands and Seals, the*, &c.

The like as in the two former Warrants (*Mutatis Mutandis*) against any Sworn Gauger, or other Officer that shall take and receive any Bribe, Money, Fee, Gift or other Reward of any Brewer, or other Person, for any Cause or Matter relating to the Excise.

Affidavit before a Justice, of Suspicion of private Stills.

A. B. *of*, &c. *Officer of Excise, maketh Oath, that* C. D. *of*, &c. *on or about*, &c. *informed him, that* E. F. *of*, &c. *did make use of private Stills, in the House*, &c. *for the Distillation of low Wines and Spirits*, &c. *contrary to the Acts of Parliament in that Case made, which gave him, this Deponent, a Suspicion of his being guilty thereof; and having made it his Business to detect the same, and lately in the Night Time observ'd several Barrels, seeming to be full of some Liquors, conveyed from the House of the said*, &c. *who is by Profession no ways concerned in any sort of Liquors; this Deponent hath just Reason to suspect the said* E. F. *is guilty of using private Stills, or some other Person for him, for the Distilling of Liquors, to the Defrauding His Majesty of his Duty for the same.* Distillers. 10 & 11 W. 3.

Jurat' coram W. B. Ar'
un' Justiciar' pacis pro
Com' præd' die, &c.

A Warrant to search for private Stills.

Essex, ss. *Whereas* A. B. *of*, &c. *Officer of Excise, hath this Day made Oath before me, that he hath Reason to suspect, that* E. F. *of*, &c. *Distiller, makes use of private Stills in the House of*, &c. *in your Parish, for Distilling of Liquors, and hath convinced me of the Justness of his Suspicion by several material Circumstances: These are therefore in His Majesty's Name to Command you to assist the said* A. B. *in making a diligent Search* 10 & 11 W. 3.

in

in the House of the said, &c. *for any Still or Stills set up by the said* E. F. *or any other Person; and in Case you find any such, that you do Sieze and Detain the same: And if they are not owned, and cannot be proved to be the Stills of the said* E. F. *or any other Person, that you do sell the same Stills within Twenty Days after Seizure, and dispose of the Monies arising by such Sale; one Moiety thereof for the use of the King, and the other Moiety to the said* A. B. *who shall so discover and seize the said Stills, according to the Acts of Parliament in that Case made.* Given, &c.

A Warrant against a Person for privately Conveying away Hops to defraud the King of his Duty.

9 Ann. Essex, ss. *Whereas* A. B. *of,* &c. *Officer of Excise, hath this Day made Information before me, that* C. D. *of,* &c. *on,* &c. *last past did privately, convey, and carry away from,* &c. *six Pounds of Hops, being, with others there, put to be cured, without paying Duty for the same, or giving Notice to any Officer thereof, contrary to an Act of Parliament in that Case made: These are therefore in His Majesty's Name to Command you, to levy on the Goods and Chattels of the said* C. D. *by Distress and Sale thereof, the Sum of Thirty Shillings, which he hath forfeited by the Offence aforesaid. And if you can find no Distress to satisfy the said Forfeiture, that then you do convey the said* C. D. *to the House of Correction,* &c. Given, &c.

An Indictment against a Brewer, for brewing Strong Beer without giving Notice to the Gauger.

Essex, ss. JURR', &c. quod J. O. de L. in Com' prædo Pandorator Duodecimo die Februarii, An. &c. apud L. prædo in Com' prædo clam & secrete pandorat' fuit (Anglice brewed) viginti cados (Anglice Barrels) optimi poti lupulat' (Anglice Strong Beer) & quod postea scil' eodem duodecimo die Februarii, Anno, &c. Vi & Armis, &c. apud L. prædo in com' prædo eosdem 20 cados optimi poti lupulat' (Anglice Barrels of Strong Beer) clam & secrete & absque aliqua Notitia inde dat' alicui Gaugeatori vel al' Officiar' dicti Dom' Reg' nunc de Excis' diversis Personis ignot' vendidit & utteravit ea intentione ad defraudand dictum Dom' Reg' nunc de suo debito Excis' dict' 20 cadorum optimi poti lupulat' (Anglice Barrels of Strong Beer) in

in magna' deceptionem Dicti Dom' Reg' nunc Cozon' & Dignitat' suas, &c.

Bridges.

Bridges, of common Right to be repaired by the County.

BRidges, of common Right ought to be repaired by the Inhabitants of the whole County, Riding or Corporation, within which they are situated, unless some particular Persons are bound to repair by some Tenure, &c. *Cro. Car.* 365. and if the same are within two Precincts, then the Inhabitants of Each ought to pay their respective Parts towards the Repairs. *Roll's Abr.* 368.

Unless in Case of Prescription to the Contrary.

But if it can be prov'd, that a Man and his Ancestors have, Time out of Mind, repaired a Bridge, such Prescription shall bind him and his Heirs, where it is done at first by Reason of some Tenure of his Lands; for Particular Persons shall not be bound by Prescription to repair, &c. if it be not in respect of the Tenure of his Land, or of some Profit arising from the Bridge, *Co.* 13. *Rep.* in both which Cases he must repair, and not the County. So 'tis likewise of any Corporation Spiritual or Temporal. And where a Charge is, by Reason of Tenure, every Owner of the Land is to be charged in Proportion. But a Lord of a Manor is not chargeable, meerly as such. *Bucknal's* Case.

Where a Person has a Profit by a Bridge.

If any Person hath Toll, or other Profit, for Passage over a Bridge, he ought to repair it: And if a Bridge was Built at first to serve a private Purpose, and afterwards becomes necessary for the Publick, the Person who built it, and not the County, must repair it. 2 *Inst.* 701. 1 *Salk.* 359. *Mod. Cases* 191.

Those who repair the Bridge must repair the Way 300 Foot.

The Persons who repair Bridges, must likewise repair the Way for 300 Feet at each End of the Bridge, 2 *Co.* 2. and they may enter on the Lands contiguous, and lay Stone, Timber, and other Materials there, for Repairing of the said Bridge, without being prosecuted by the Owners of such Lands, because 'tis for the publick Good.

In Cases where Persons are bound to repair by Tenure, and the Party indicted found guilty for not Repairing, the King may Pardon the Fine, but not the Offence; for that continues still, and he may be indicted again. 2 *Co.* 30.

There

Three Stat. about Bridges.

There are three Statutes which concern the Building, Repairing, &c. of publick Bridges, *viz.*

Magna Charta.

1. *Magna Charta*, by which 'tis enacted, That neither any Town, or Freeman, ſhall be diſtrained to make Bridges, or Banks, but ſuch who antiently, and of Right have been accuſtom'd to do it; and this was Declarative of the Common Law. 2 *Inſt.* 29.

22 Hen. 8. c. 5.

2. The Stat. of 22 *Hen.* 8. *c.* 5. by which four Juſtices (*Quorum unus*) may in their Seſſions enquire, hear, and determine, concerning Bridges and Highways, adjoyning within 300 Feet, and may charge thoſe who ought to repair the ſame, by ſending Proceſs, and impoſing ſuch Penalties as they ſhall think fit.

Where Lands are given towards the Repair of Bridges, they muſt be Let by the Truſtees for the beſt Rent, &c. without taking any Fine; and if the Truſtees are negligent, the Juſtices may do it, by 22 *Car.* 2.

If it cannot be known who ought to Repair, upon an Enquiry made by the Grand Jury in Seſſions, then they are to Preſent that the Bridge is in Decay, and that 'tis not known what Perſons, Lands, or Tenants, or Bodies Politick, ought, or by Right, or antient Cuſtom, us'd to repair the ſaid Bridge, or any Part thereof.

When this is done, the Juſtices may call the Conſtables of every Pariſh, &c. and if they are not there, may ſend Warrants for them to appear at a particular Time and Place, to make a Tax.

But by Stat. 22 *Hen.* 8. the Juſtices without the Conſtables, or two able Inhabitants of every Pariſh, cannot make a Tax.

Common Courſe contrary to the Stat.

But contrary to that Statute, the uſual Courſe is to charge every Hundred with a Sum in groſs, and to ſend it to the High Conſtable of each Hundred, who ſend their Warrants to the Petty Conſtables to gather it; by Virtue whereof they aſſeſs the Inhabitants in particular Sums, and collect it, and pay it to the High Conſtables, who bring it to the Seſſions.

1 Ann. The Method of raiſing Money at this Day.

But this being not warranted by Law, and beſides, in many Places more Money being levied than was really neceſſary for Repairing, and alſo becauſe the Money was miſemploy'd when levied, therefore was,

3. The Statute of 1. *Ann.* made, by which new Act the old Stat. 22 *Hen.* 8. is recited and confirm'd in all things, except ſuch as are alter'd thereby.

And

And by this Stat. the Juſtices in Seſſions, on ſuch Preſentment made, as before-mention'd, may aſſeſs every Town, Pariſh, or Place, within their Commiſſion, in Proportion, as uſually hath been aſſeſſed towards the Repair of the Bridge.

The Money thus aſſeſs'd, is to be levied by the Conſtable or Headborough of every reſpective Pariſh; or by ſuch as the Juſtices in Seſſions ſhall appoint.

The Manner of levying it is, for the Headborough to demand it of the Party; and if 'tis not paid within ten Days after the Demand, he may levy it by Diſtreſs and Sale of his Goods, rendring the Overplus; the neceſſary Charges of the Diſtreſs being firſt deducted.

When 'tis levied, the Headborough muſt pay it to the High Conſtables of every Hundred, within ſix Days after 'tis collected; and they muſt pay it to ſuch Perſons as the Juſtices by a Seſſions Order ſhall appoint to receive it; and this Payment muſt be within ten Days after the Receipt by the ſaid Conſtables.

And then 'tis to be employ'd according to the Orders and Directions of the Juſtices, for and towards repairing and mending the Bridges.

And if any of the Officers neglect to aſſeſs, collect, or pay the Money, they forfeit 40 *s.* for every Offence.

And if the Receiver, who is appointed by the Juſtices, pays any Money without their Order, he forfeits 5 *l.* which muſt be applied to repair the Bridge.

No Fines upon Preſentments, or Indictments, *&c.* ſhall be return'd into the Exchequer, but ſhall be paid to ſuch Receiver.

All Matters concerning Repairing and Amending Bridges, ſhall be determin'd in the County where they are ſituated, and not elſwhere: And no Preſentment or Indictment ſhall be removed by *Certiorari*, before Traverſe and Judgment.

All Matters concerning Bridges to be determin'd in proper County. 22 Car. 2. c. 12. Sect. 4.

By the ſame Act the Juſtices may allow 3 *d.* in the Pound, out of the Money collected, to any Perſon concern'd in the Execution of the Act. And if any Suit is brought for putting the Act in Execution, the Defendant may plead the General Iſſue, and give the Act of 22 *Hen.* 8. *c.* 5. and alſo this Act in Evidence; and if he has a Verdict, ſhall have double Coſts.

By

By this Act 'tis also further provided, That the Evidence of the Inhabitants of such Places, where the Bridges are in Decay, shall be taken and admitted at any Trial upon an Information, or Indictment, &c.

And lastly, the Stat. of 23 *Eliz.* is repeal'd, and *Cardiff* Bridge shall be reputed a common Bridge, and repaired by the County of *Glamorgan.*

And the Wardens and Assistants of *Rochester* Bridge, shall be chose yearly on *Friday* in the Week next after *Easter*-Week.

On an Indictment for not repairing of Bridges, a Fine may be set by the Justices in Sessions on any Inhabitant of the County being made Defendant to the Indictment, who shall have Contribution from the rest, &c. 6. *Mod. Rep.* 307.

'Tis not always necessary to set forth in the Indictment, *ad commune nocumentum*; for if 'tis that *Legei Dom. Regis* cannot pass, *ad nocumentum eorum*, the Word *Ligei* takes in all the King's Subjects, and then *ad nocumentum eorum* amounts to as much as *ad commune nocumentum.* 2. Leon. 183.

So an Indictent for pulling down a Bridge in *Via Regia*, was held good, tho' it did not shew that it was a common Bridge. 4. *Leon.* 40.

'Tis safest for Justices to do all things relating to Bridges in open Sessions.

The safest Way for the Justices is to do all things which relate to Bridges in the open Sessions, as well where 'tis not known who shall repair, as where the Person obliged to repair is known: In which Case.

Yet out of Sessions Four.

1. Four Justices (*Quorum unus*) may call before them the Constables of every Parish, or two Inhabitants thereof.

2. They may, with their Assent, tax every Inhabitant.

3. After the Tax made, they must write the Name of every Man taxed, in two Rolls indented.

4. They must appoint two Collectors for every Hundred, and give them one Part of the Roll under the Hands and Seals of the Justices.

5. By Virtue thereof the Collectors may distrain.

6. Justices may appoint two Surveyors to view the Repairs, and cause the Decays to be amended.

7. Both Collectors and Surveyors must account to the Justices, who, if they refuse or neglect, may send Process against them returnable in Sessions, and commit them.

The Act of 22 *Hen.* 8. doth not extend to the *Cinque-Ports*, or Members of the ſame, where the Warden, Mayors and Bailiffs elected, and Jurats of the ſame have ſuch Power and Authority as Juſtices do in their Shires, *&c.*

Stat. 22 Hen. 8. doth not extend to Cinque Ports.

None can be compell'd to make new Bridges where never any were before, but by Act of Parliament. 1 *Roll.* 368.

If one erect a Mill for his private Profit, and makes a new Cut for the Water to come to it, and a new Bridge over that Cut where the Queen's Subjects paſs and re-paſs, it muſt be repair'd by thoſe who have the Mill, and not the County, 8 *E.* 3. *B. R.* Adjudg'd for *Bow* Bridge and *Channel* Bridge, againſt the Prior of *Stratford*; and it is now repair'd by the City of *London*, which hath the Mill.

Where a Man and his Anceſtors, or Predeceſſors, have uſed Time out of Mind, to repair a Bridge, the King cannot acquit or diſcharge them thereof. *Fitz. G. Abridgm.* 94.

Juſtices of Peace, where a decay'd Bridge is, may award Proceſs into the County where the Party or Land chargeable is. *Dalt.* 45.

Indictment for not repairing a Bridge in *Nottinghamſhire*, againſt all the Inhabitants of the County; they plead that *J. S.* ought to repair it *abſque hoc* they; the Plaintiff replies, that they *abſque hoc J. S.* Iſſue joyn'd in the laſt Traverſe and try'd by a Jury of *Middleſex*, becauſe they are all Parties: *Nota hoc*, and the Manner of this Pleading and Iſſue. *Rex* verſus *Inhabitants de Com. Nottingham*, *M.* 26 *Car.* 2. in *B. R.*

Adjudg'd upon a Trial at Bar, on an Information for not repairing a common Bridge which the Defendants were bound to repair, that if a Manor is held by the Tenure of repairing a Bridge or highway, which Manor afterwards comes into ſeveral Hands, that in ſuch caſe, every Tenant of every Parcel, either of the Demeſnes and Services, is liable to the whole Charge, but ſhall have Contribution of the reſt. 'Tis true, the Lord of the Manor may agree with every Purchaſer to diſcharge him from repairing; but ſuch an Agreement will not alter the Remedy which the Publick may have; it only binds the Lord, who ſhall never apportion the Charge, and make the Remedy for the Publick more difficult: Neither ſhall he take away the Remedy by Alienations to Perſons unable to pay, and tho' the Manor comes to the Crown the Charge ſhall continue. 1 *Salk* 358. *Mod. Caſes* 150.

Any

Any Inhabitant of the County may be a Witneſs, but the Jury muſt be of the next County. 1 *Salk.* 159. *Mod. Caſes* 191, 306.

Generally and of common Right the whole County is liable, and not the Owners of the Land adjoining.

If Evidence can be given, that a Man hath once repair'd, tho' not for many Years, yet thoſe who have his Eſtate in the Land ſhall be liable, becauſe it ſhall be ſuppoſed to be done by reaſon of his Tenure, unleſs ſome other Cauſe can be ſhewed: And when a Charge is by reaſon of Tenure, every Owner of Land is to be charged proportionably.

Grand Juries ought to find who are to repair Bridges.

Juſtices of Peace are to award Proceſs to get Bridges repair'd. *Dalt.* 45.

A Bridge between two Counties is to be repaired between them. *Poph.* 192. *Roll. Abr.* 368.

If a Private Man build a Bridge, which after becomes of publick Uſe, then that makes it a County Bridge. *Black.* 74, 75.

An Order of Seſſions for repairing a Bridge.

Eſſex, ſſ. Ad Generalem Quarterial' Seſſion' Pacis, &c. Dom. Regis Tent. pro Com. præd. apud, &c. in eodem Com. Die, &c. Anno Regni Domini noſt. Georgii, &c. primo, Annoq. Dom. 1715.

WHereas the Inhabitants of, &c. *in the County aforeſaid, were at the laſt General Quarter-Seſſions, held for the ſaid County, indicted for not repairing of a Bridge called,* &c. *then and now in Decay: And whereas upon Trial of the Traverſe joined, and the County having Notice, it was then and there found, that the ſaid Inhabitants ought not to repair the ſaid Bridge; and the Jury having preſented, That it cannot be made appear, that any particular Hundred or Pariſh, Lands or Tenements in the ſaid County of,* &c. *ought of Right to repair the ſame, it is therefore now Order'd by this Court; and we do hereby, according to the Form of the Statute in that Caſe made and provided, order and direct that the ſaid Bridge ſhall be well and ſufficiently repaired by the Inhabitants of the County of,* &c. *within which the ſaid Bridge ſtandeth; and that the*

Juſtices

Juſtices of the Peace, within their ſeveral Diviſions, do take care of the Raiſing Monies for that Purpoſe. In Witneſs, &c.

A Warrant to the Conſtable, &c. to make a Tax for the Repairs of a Bridge, purſuant to the aforeſaid Order.

Eſſex, ſſ. *WHereas at the General Quarter-Seſſions of the Peace, held for the County aforeſaid, at,* &c. *on,* &c. *laſt paſt, the Grand Jury preſented the Bridge called,* &c. *in the Pariſh of,* &c. *in the ſaid County, to be in Decay, and out of Repair; and the ſaid Decays and Reparations were then and there order'd to be amended, and made good at the Charge of the County: Theſe are therefore in his Majeſty's Name to command you the ſaid Conſtable, and Inhabitants aforeſaid, that you do immediately, upon the Receipt of this Precept, make a Taxation on all and every the Inhabitants of the Hundred, or Diviſion of,* &c. *aforeſaid, for the Raiſing the Sum of,* &c. *to be applied towards the Repairing of the Bridge aforeſaid: and that you do bring the ſaid Tax fairly written and ſubſcribed by you, or ſome of you, unto us at the Houſe of,* &c. *on,* &c. *next, for our Approbation, and that we may further proceed therein, as to Juſtice doth belong.* Given, &c.

22 Hen. 8. Four Juſtices, Quorum unus.

A Warrant to collect the Rate and Taxation.

Eſſex, ſſ. *WHereas at the General Quarter-Seſſions of the Peace, held,* &c. *the Bridge called,* &c. *ſituate in,* &c. *in the County aforeſaid, was preſented by the Grand Jury to be in Decay, and out of Repair; and the Decays and Reparations of the ſaid Bridge, were by the Court order'd to be amended, and made good at the Charge of the County: And whereas we have lately iſſued out our Warrant to the Conſtable of,* &c. *to make a Taxation on all and every the Inhabitants in the ſaid Hundred, for raiſing the Sum of,* &c. *towards the Repairing of the ſaid Bridge: And the ſaid Conſtable hath this Day, purſuant to our ſaid Warrant, brought to us a Tax on the Inhabitants of the ſaid Hundred, and we have, on Peruſal thereof, allowed the ſame: Theſe are therefore to require you forthwith to collect the ſeveral Sums of Money mention'd in the ſaid Taxation, which is hereto annex'd, on the ſeveral Perſons therein expreſſed; and that you do pay the ſame unto,* &c. *whom we have appointed General Receiver of the ſaid Monies to be raiſ-*

22 Hen. 8.

ed for the Purpose aforesaid, first deducting thereout the Sum of, &c. *by us allow'd unto you for your Care and Pains in collecting and paying the same. And in Case of Refusal, or Neglect of Payment, by any of the Persons, of the particular Sums on them respectively taxed, that then you do certify unto us the Name or Names of the Person or Persons so refusing, with all convenient Speed.* Given, &c.

A Warrant to levy the Taxation by Distress, where 'tis refused Payment.

22 Hen. 8. Four Justices, Quorum unus.

Essex, ss. *Whereas* A. B. *of,* &c. *and* C. D. *of,* &c. *who have been duly appointed to collect the Monies imposed upon the Hundred of,* &c. *towards the repairing the Bridge of,* &c. *in the County aforesaid, have this Day made Complaint unto us, That* E. F. *and* G. H. *both of,* &c. *within the said Hundred of,* &c. *have refused to pay the respective Sums of,* &c. *which they were severally taxed, for the Purpose aforesaid, though the same were legally demanded: These are therefore to require you to give Notice to the said* E. F. *and* G. H. *both of,* &c. *to come before us, to answer the Premisses; and if they refuse so to do, that then you do levy the several Sums aforesaid, by Distress and Sale of the several Goods of the said* E. F. *and* G. H. Given, &c.

An Appointment of Collectors to receive Monies for Repairs of Bridges.

1 Ann.

We A. B. C. D. &c. *Esqrs; four of His Majesty's Justices of the Peace, for the County aforesaid,* Quorum unus, *have nominated and appointed, and by these Presents do appoint* C. L. *of,* &c. *and* T. M. *of,* &c. *both in the Hundred of,* &c. *in the County aforesaid, to be Collectors and Receivers of all Monies already raised and levied, or to be at any Times hereafter raised and levied, by Virtue of any Warrant from us within the Hundred of,* &c. *aforesaid, for and towards the Repairing of,* &c. *Bridge, in the Parish of,* &c. *in the County aforesaid, now presented, and order'd to be amended, so as they the said* C. L. *and* T. M. *do from Time to Time render and give to us true Accounts of the same, and the Disposal thereof.* In Witness, &c.

An Indictment where a Bridge is in Decay, and 'tis not known who ſhall repair it.

Eſſex, ſſ. JURR' &c. quod pons publicus & communis ſitus in alta via Regia ſuper * flumen de L. infra Parochiam de H. in Com. S. vulgariter dictus, &c. eſt & per aliquot Annos jam ult' elaps' fuit valde ruinoſus & in maximo decaſu pro defectu Reparationis adeo ut ſubditi Dom. Regis in ſupra, trans vel ultra dictum pontem per ſe vel cum eorum equis, vel carriagis, tranſire, redire & ire ſine magno diſcrimine non poſſunt nec audent ad commune nocumentum omnium dict' Dom. Regis ſubditorum quorum Intereſt ratione negotiorum ſuorum ibidem tranſire & ulterius jur' pred'. preſentant quod prediſtus neſcitur que Perſone que Terre ſive Tenementa aut Corpora Politica eundem pontem, aut aliquam inde Parcellam ex Jure aut ex antiqua conſuetudine reparare debent aut conſueverunt. 22 Hen. 8. * Or ſupra aquæ curſum.

If it is known who ought to Repair *ratione tenuræ*, then the Indictment muſt be thus, *viz.* after the Recital that it is in Decay, † & quod R. B. ratione tenure, ſeu Manerii ſui de A. cum pertinen' in Com. S. predict' pontem illum reparare & emendare debet; & quod idem R. B. ac omnes alii quorum ſtatum pred' R. B. habet in eodem Manerio de, &c. pontem illum reparare & emendare debent & conſueverunt de tempore cujus contrarii memoria hominum non exiſtit toties quoties neceſſe fuit, &c. Godb. 346, 347. † If the Inhabitants of a particular Place ought to repair, then ſay, Et quod Inhabitantes de, &c. pro tempore exiſtentes debent reparare, ſuſtentare & manutenere predict' pontem & quilibet eorum pro ſua parte reparare debet, &c.

Buggery. Vide Felony.

Building.

ALL Houſes built on old or new Foundations, within the Bills of Mortality, after *May* 1. 1708, ſhall have Party-Walls between of two Bricks thick in the Cellars and Ground-Stories, and thirteen Inches thick upwards from the Foundation, and eighteen Inches above the Roof; and no Cornice of Wood muſt be made in ſuch Houſes, but Front and Rear-Walls of ſuch Houſes ſhall be built of Stone, 6 Ann. c. 31. How Houſes muſt be built after May 1, 1708, or forfeit 50 l.

or Brick, and be carried two Foot and a Half high above the Garret-Floor. And if any Houſe is built in the ſaid Places, contrary to the Intent of the ſaid Act, then the Owner of the Houſe, and Head Builder, ſhall each of them forfeit 50 *l.* one Moiety to the Informer, the other to the Poor of the Pariſh where the Houſe is built, to be paid to the Church-Wardens for that Purpoſe.

This is to be levied by a Warrant from two Juſtices by Diſtreſs and Sale of the Offender's Goods.

The Conviction is to be upon Oath, or upon View of one or more Juſtices; and for want of Diſtreſs, the Party ſhall by the like Warrant be committed till Payment. Stat. 6 *Ann. c.* 31.

By Stat. 11 *Geo.* 1. *c.* 28. it is enacted, That all Perſons erecting any Houſe on an old or new Foundation in *London* or *Weſtminſter*, or the Weekly Bills of Mortality, or in *Mary la bone*, or *Paddington*, or the Pariſhes of *Chelſea* and St. *Pancras* (except Houſes on *London Bridge* and on the *Thames* below Bridge) and who think it neceſſary to pull down any Partition-Wall between that and the adjoining Houſe, ſhall (if the Owner of the adjoining Houſe will not agree) give three Months Notice in Writing of their Intention, that before the Party-Wall be pulled down, it may in a Month after Notice be viewed by four able Workmen, two to be named by the firſt Builder, and two by the Owner of the next Houſe; and if either Party ſhall not name in three Weeks ſuch Workmen, then the other ſhall name four to view the Party-Wall, and without Conſent the ſame ſhall not be pulled down unleſs in the ſaid Caſes; and the major Part of the Workmen ſhall certify to the Quarter-Seſſions that the Party-Wall is defective; and if any Perſon ſhall think himſelf aggrieved by ſuch Certificate, the Juſtices are to ſummon before them one or more of the Workmen, and ſuch others as they think fit, and examine them upon Oath; and thereon the Juſtices are to make Orders in the Premiſſes, which ſhall be concluſive to all Parties without Appeal.

The Water falling from the Tops of the Houſes built after 24 *June*, 1725, in the ſaid Limits; and Water falling from Balconies and Penthouſes ſhall be conveyed into the Chanels by Party-Pipes on the ſides of the Houſes, on Forfeiture of 10 *l.*

All Penalties impoſed by this Act ſhall be ſued for in Manner before-mentioned; and one Moiety ſhall be to the Informer, and the other to the Poor of the Pariſh.

Builders

Builders not having built their Houſes according to the Act 6 *Ann. cap.* 31. for the better regulating Buildings, *&c.* who ſhall before the 29th of *September*, 1727, make good the Defects, and pay to the Informers their Coſts of Suit, which ſhall have been commenced (upon which no Conviction ſhall be obtained before *May* 10, 1725) to be ſettled by three or more Juſtices, ſhall not be liable to the Penalties of the ſaid Act: But if ſuch Builder ſhall not make good ſuch Defects, and pay the Coſts ſo ſettled, he ſhall forfeit double the Penalty in the Act. And all Builders convicted before the ſaid 10th of *May*, who ſhall not make good the Defects before the Time before limited, ſhall, notwithſtanding ſuch Conviction, be further liable to the Penalties of the ſaid Acts, to be recovered as by the ſaid Acts are directed: But if the preſent Owners ſhall deny the firſt Builders within the limited Time, on 30 Days Notice, to enter upon the Premiſſes, and bring Materials to make good the Defects, then on Oath before two or more Juſtices of ſuch Denial, the firſt Builder ſhall be diſcharged from the Penalties, and the preſent Owner ſhall be liable to pay the ſame.

Whereas the Conviction for the ſaid Forfeitures was to be only before one Juſtice of the Peace after the 25th of *June*, 1725, it ſhall be before two Juſtices at the leaſt. *But ſee the Act at large.*

A Warrant againſt an Owner of an Houſe, and Head Builder, for Building contrary to the Acts.

London, ſſ. *WHereas* A. B. *Owner of a New Houſe in* Fleet-ſtreet, *was on the Day of the Date hereof, convicted before us,* &c. *by the Oath of* W. D. *of,* &c. *for that he the ſaid* A. B. *did, after the firſt Day of* May, *which was in the Year* 1708, *together with* G. D. *of,* &c. *Maſon, who did undertake to build the ſaid Houſe, accordingly build the ſame without Party-Walls between Houſe and Houſe, made either of Brick or Stone,* &c. *and did make, or ſuffer to be made, Mundillions, or Cornices of Timber, or Wood, under the Eaves of the ſaid Houſe; and did not build, or cauſe to be built, the Front, and Rear-Walls of the ſaid Houſe, either with Brick or Stone; or carry the ſame above two Foot and Half high above the Garret-Floor of the ſaid Houſe; nor cope it with* 6 Ann. c. 31.

Stone or Brick, contrary to the Law in that Caſe made and provided; by Reaſon whereof each of the ſaid Perſons have forfeited the Sum of Fifty Pounds: Theſe are therefore to require you forthwith to levy the reſpective Sums of Fifty Pounds, by Diſtreſs and Sale of the reſpective Goods of each of the ſaid Perſons; and that you pay one Moiety thereof to W. D. *of*, &c. *who firſt informed us of the ſaid Offence; and the other Moiety to the Church-wardens of the Pariſh of St.* Dunſtan's *in the* Weſt, *where the ſaid Houſes were erected, for the Uſe of the Poor thereof; and hereof fail not.* Given *under our Hands and Seals*, &c.

A Mittimus for want of a Diſtreſs.

6 Ann. cap. 31. London, ſſ. *Whereas* T. D. *Maſon, and Head Builder of a Houſe newly erected in the Pariſh of St.* Dunſtan's *in the* Weſt, *in* London, *was lawfully convicted before us*, R. B. *and* G. G. &c. *for that he, on the ſixth of* Auguſt *laſt paſt, did erect and build the ſaid Houſe, in the Pariſh aforeſaid; and did make, or ſuffer'd to be made Mundillions, or Cornices of Timber or Wood, under the Eaves thereof, contrary to the Statute in that Caſe made and provided, by Reaſon whereof he hath forfeited fifty Pounds: And whereas the ſaid Sum cannot be levied by Diſtreſs and Sale of the Goods of the aforeſaid* T. D. *who for want of ſuch Diſtreſs is to be impriſon'd; Theſe are therefore to require you to convey the ſaid* T. D. *to the common Gaol of* Newgate, *and to deliver him to the Keeper thereof, who is hereby required to keep him in his Cuſtody, until Payment ſhall be made of the ſaid* 50 l. *as the Law directs*, &c.

Bullion.

6 & 7 W. 3. cap. 17. Perſons having unlawful Bullion, ſhall be committed to Gaol by one Juſtice for ſix Months. *Note*; 'Tis one Juſtice, or Wardens of the Company of *Goldſmiths*, &c. within the Bills of Mortality, and two Juſtices in any Town or Place.

Two Juſtices may grant a Warrant for Conſtable to ſearch any Perſons Houſes ſuſpected to have unlawful Bullion, and to break open Doors, Boxes, &c. to ſearch for, and diſcover the ſame.

Perſons apprehending Clippers, Waſhers, Counterfeiters, and Filers of the current Coin of this Kingdom,

dom, ſhall have Forty Pounds paid them within one Month after Conviction, on Certificate from Judge or Juſtices before whom convicted.

Perſons guilty convicting two, ſhall be pardon'd; and an Apprentice making a Diſcovery, ſhall be made a Freeman.

Burglary. See Felony.

Butchers.

THere are ſome good Laws made for the better Regulation, and preventing the Abuſes committed by Butchers.

Butcher ſelling Swine's Fleſh meaſled, or dead of the Murrain, on Conviction ſhall be amerced the firſt Time; the ſecond, put in the Pillory; third, fin'd and impriſon'd; fourth, ſhall forſwear the Town. 17 *Ed.* 2. *c.* 7. *vid.* 51 *Hen.* 3. Butcher ſelling Swines Fleſh meaſled.

Butcher killing, or ſelling Victuals on the Lord's Day ſhall forfeit 6 *s.* 8 *d.* being convicted by View of Juſtice, Confeſſion, or two Witneſſes, before one Juſtice; to be levied by Diſtreſs, &c. a third Part to the Informer, the reſt to the Poor. 3 *Car.* 1. *c.* 1. Butcher ſelling Meat on the Lord's Day.

If a Butcher buy fat Cattle and ſell them again alive, he ſhall forfeit them, Stat. 3 & 4 *Ed.* 6. *c.* 89. And if he ſhall buy fat Cattle, and ſell them again alive to another Butcher in *London*, or *Weſtminſter*, or within Ten Miles thereof, the Seller ſhall forfeit the Value of ſuch Cattle; one Moiety to the King, the other to the Informer. 15 *Car.* 2 *c.* 8. 22 & 23 *Car. c.* 10. 1 *Jac.* 2. *c.* 9. Butcher's buying and ſelling fat Cattle alive.

King's Moiety to be eſtreated, Proſecutions to be levied by *Fieri Facias*, or *Capias*; Proſecution in ſix Months at Quarter-Seſſions, may proceed notwithſtanding any *Certiorari*.

This Act of 22 & 23 *Car.* 2. was reviv'd in 1 *Jac.* 2. and afterwards continued by another Act in the 4 & 5 of King *William* and Queen *Mary*; and by another in the 11 & 12 of K. *W.* 3. and ſo further continued by an Act made in the 5th of Q. *Anne*, which was ſince explained by another Act in the 7th of the ſame Queen, by which Butchers were allowed to ſell to one another, Calves, Sheep or Lambs dead, not- 22, 23 Car. 2. continued.

withſtanding the Laws formerly in Force againſt that Practice.

A Butcher is not to kill his Beaſts in his Scalding-houſe, or within the Walls of the City of *London*, on Forfeiture of 12 *d.* for every Ox, and 8 *d.* for every other Beaſt. 4 *Hen.* 7. *c.* 3.

Butcher muſt not be a Tanner.

Butcher exerciſing the Myſtery of a Tanner, forfeits 6 *s.* 8 *d. per* Day; one third to the King, the other to the Proſecutor, and the other to the City, Borough, Town, or Lord of the Liberty where Offence is committed: Proſecution at Quarter-Seſſions. 1 *Jac.* 1. *c.* 22.

Butcher gaſhing any Hide, forfeits 1 *s.* 8 *d.* for every Hide, to be divided as above. Butcher Watering of Hides, except in *June*, *July*, or *Auguſt*, or putting them to Sale being putrified, forfeits 3 *s.* 4 *d.* a Hide, as before.

Butcher is not to ſell his Goods at unreaſonable Rates, but for a moderate Profit, on Pain of forfeiting double the Value.

Butchers agreeing not to ſell but at their own Prices.

Butchers conſpiring not to ſell but at Prices agreed on; the firſt Offence is 10 *l.* to the King; and if not paid within ſix Days after Conviction, muſt have Twenty Days Impriſonment; ſecond Offence 20 *l.* and if not paid then, the Pillory; the third Offence 40 *l.* and if not paid, *&c.* loſe one Ear. 2 & 3 *Edw.* 6. *c.* 15.

Butcher indicted for Buying and Selling of Cattle. *Latch* 192.

An Indictment for ſelling Unwholſome Meat.

Eſſex, ſſ. JUr' ꝛc. quod A. B. de ꝛc. in Com' pꝛed Lanius die, ꝛc. apud, ꝛc. in Com' pꝛed carnes inſalubꝛes, viz. putꝛid coꝛrupt' & ventilat'. fraudulenter ſubdole & deceptive venditioni expoſuit in malum exemplum & magnu' periculu' ſubditoꝛ' Domini Regis nunc & contra pacem, ꝛc.

Butter and Cheeſe.

JUſtices in Seſſions may reſtrain the Retailing of Butter and Cheeſe; and none, except Innholders or Victuallers, are to buy Butter or Cheeſe to ſell again, except by Retail in open Shop, Fair, or

Market, &c. and not above a Weigh of Cheese, or Barrel of Butter at one Time, on Pain to forfeit double the Value. 3 & 4 and 5 & 6 *Edw.* 6.

Every Kilderkin of Butter shall contain 112 *l.* neat, or above, of good Butter; every Firkin 56 *l.* beside the the Weight of the Cask; every Pot 14 *l.* beside the Weight of the Pot. Good and bad Butter shall not be pack'd together, nor Whey-butter with Cream, nor salted with great Salt, nor more than needful, upon Pain that the Owner or Packer, &c. shall forfeit the Value of the Butter if exposed to sale; and for not putting up such Quantities as aforesaid, or false Packing, and for every Pound wanting in every such Cask, or Pot, six Times the Value of every Pound. Every Cheese-monger shall deliver Butter as aforesaid; or in Default, shall make Satisfaction to the Buyer. No Cheesemonger, or other, shall re-pack Butter, on Forfeiture of double the Value of such Butter. Every Person Packing up Butter for Sale, shall put it in good, sound, dry Casks, and shall set on every Cask the just Weight of the Cask, and where filled with Butter, the first Letter of Christian Name, and Sirname at Length, with an Iron Brand, on Penalty of 10 *l.* for every Hundred Weight of Butter, and so proportionably for greater or lesser Quantities. Every Potter shall set the just Weight of the Pot on every Pot he sells for Butter, with first Letter of Christian, and Sirname at Length, on Penalty of 1 *s.* a Pot for every such Neglect. Farmer, &c. exposing to sale Butter in Pots not marked as aforesaid, forfeits 2 *s.* for every Pot. All Offences against this Act are to be heard and determined at Quarter-Sessions for the County, City, &c. where committed, or in any Court of Record. Half the Penalties to the Poor, where, &c. to be Paid to Church-wardens, &c. the other Half to the Prosecutor, besides double Costs, so as such Suit be within four Months after Sale of such Butter.

13, 14 Car. 2. 56 l. the Firkin, together 64. Pot 6 l. together 14 l.

By Action, Indictment, or Presentment.

Importers of Butter and Cheese out of *Ireland*, liable to the same Penalties as Importers of Cattle (*viz.*) to have it divided between Seisor and Poor. Conviction by View of any Justice, Confession or one Witness on Oath before one Justice.

4 & 5 W. & M.

The Buyer having approv'd the Butter, the Seller is not afterwards liable to any Penalty in the Act 14 *Car.* 2. And the Buyer must then set his Mark, or Name at Length on the Cask: Afterwards, if the Seller shall open, or exchange the Cask, or if he pack

pack up bad Butter, or mix bad with good, &c. he ſhall forfeit 20 *s.* for every Firkin, to be levied by Warrant of one Juſtce, on Conviction by one Witneſs on Oath, or Confeſſion.

Weigher, &c. of Butter and Cheeſe ſhall ſhip off all that belongs to *London* Cheeſemongers, for which they ſhall have 2 *s.* 6 *d.* a Load; on Neglect ſhall forfeit 10 *s.* for every Firkin of Butter, and 5 *s.* for every Weigh of Cheeſe, to be levied as aforeſaid. Weigher ſhall keep a Book to enter all Cheeſe and Butter brought into his Hands, with the Name of the Owner, Time, and Quantity, and ſhall make the ſame Entry when ſhip'd off, with the Name of the Veſſels, to whom conſign'd. Offender, on Conviction as aforeſaid, ſhall forfeit for every Firkin of Butter 2 *s.* 6 *d.* for every Weigh of Cheeſe 2 *s.* 6 *d.* and for every other of the aforeſaid Offences 2 *s.* 6 *d.* to be levied as aforeſaid; for want of Diſtreſs to be committed 'till paid; Penalty between Informer and Poor. Every Maſter of a Ship, &c. refuſing to take in Butter, &c. forfeits 5 *s.* for every Firkin of Butter, and 2 *s.* 6 *d.* for every Weigh of Cheeſe. Appeal to Quarter-Seſſions. Party Appealing firſt to give Bond to the Party accuſed of 20 *l.* Penalty, with ſufficient Surety to pay Coſts, if not relieved on his Appeal. The Coſts to be allowed by Juſtices in Seſſions.

This Act excludes not Cheeſemongers Free of *London*, to ſend their own Veſſels, or ſuch as they ſhall Hire for their own Goods: Neither does it extend to the Counties of *Lancaſter* and *Cheſter*, nor to the County of the City of *Cheſter*.

A Warrant to levy the Forfeiture for mixing bad Butter with good.

13, 14 Car. 2. c. 26.

Eſſex, ſſ. WHereas A. B. *of*, &c. *Cheeſemonger, hath been duly convicted before me, upon Oath of*, &c. *that he the ſaid* A. B. *did mix in a Firkin bad Butter with good, after the ſame was ſold to* C. D. *of* &c. *and after the Mark of the ſaid* C. D. *was ſet on the ſaid Firkin, by Reaſon whereof he hath forfeited the Sum of Twenty Shillings, to be equally divided between the Poor of the Pariſh of* D. *where the ſaid Offence was committed, and the Informer, according to the Statute in that Caſe made and provided. Theſe are therefore in his Majeſty's Name to Command you to levy the ſaid Sum of Twenty Shillings, ſo forfeited as aforeſaid, by Diſtreſs and Sale of the Goods of the ſaid*

ſaid A. B. *reſtoring to him the Overplus, if any ſuch ſhall happen to be, after your Charges for taking the ſaid Diſtreſs ſhall be deducted.* Given, &c.

Buttons and Button-holes.

NO foreign Buttons whatſoever ſhall be imported, on Penalty of forfeiting one Hundred Pounds, and Loſs of Buttons. Moiety to the King, and Moiety to the Informer. Proſecution to be within a Year after Diſcovery made of the Offence committed. Juſtices may ſeize on Information; and they who ſell, or expoſe to ſale ſuch imported Buttons, forfeit for every Offence Fifty Pounds, *per* 13 & 14 *Car.* 2. *c.* 13. 4 & 5 *W.* & *M. c.* 10.

No foreign Buttons to be imported.

Every Perſon making or ſelling Buttons of Cloth, Serge, or any other Stuffs, or of Wood only, ſhall forfeit Forty Shillings a Dozen to King and Proſecutor, 10 & 11 *W.* 3. *c.* 2. but this Statute is eluded by making Buttons of Horn, which are now worn by the common People.

None to make or ſell Buttons of Cloth, &c.

Taylor making, ſelling, ſetting on, or binding on any Cloaths Cloth or Stuff Buttons, or Button-holes, &c. forfeits five Pounds, to be levied by Diſtreſs, &c. by Warrant from two Juſtices. Appeal to Quarter-Seſſions, to pay Coſts if not relieved. 8 *Ann. c.* 6.

No Taylor, or other Perſon ſhall make, ſell, ſet on, uſe or bind, or cauſe to be, &c. on any Cloaths or wearing Garments, any Buttons or Holes, made or bound with Cloth, Serge, &c. on Penalty of Forty Shillings for every Dozen of ſuch Buttons or Holes; and ſo in Proportion for a greater or leſſer Quantity. Conviction by Oath of one Witneſs. Not to extend to Velvet. Any Perſon being in any Gaol, or within the Rules and Liberties of them, offending as above, ſhall be ſubject to the ſame Penalties. Proſecution in three Months. Penalty to the Poor of, &c. and to the Informer; Charges of Conviction being firſt deducted. On Refuſal of Payment for 14 Days after Conviction, to be levied by Diſtreſs, &c. For Want, to be committed for three Months to Gaol, and be kept to hard Labour. Appeal to Qarter-Seſſions. Cloaths expoſed to Sale in any Fair, or Shop, &c. ſhall be forfeited and ſeiſed, and applied to the Uſes aforeſaid, and to be recovered as aforeſaid. 4 *Geo. c.* 7.

No Taylors to make or ſet on Buttons of Cloth, &c.

1 Juſtice.

Taylor,

4 Geo. c. 7. Taylor, cauſing Servant or Apprentice to make ſuch Cloaths, ſhall be liable to the Penalties aforeſaid, if intitled to the Money for making them.

No Perſon ſhall wear Buttons or Holes made of Cloth, &c.

No Perſon ſhall wear any Cloaths or Garments with Buttons or Button-holes made of Cloth, Serge, Stuffs, *&c.* under the Penalty of Forty Shillings *per* Dozen. Conviction by the Oath of one or more Witneſſes, or Confeſſion before one Juſtice. Penalty to be levied by Diſtreſs and Sale of the Offenders Goods; one Moiety to Informer, the other to the Poor of, *&c.*

7 Geo, c. 12. This Act not to extend to Velvet, and Proſecution muſt be in a Month; Perſons aggrieved may appeal to the Quarter-Seſſions, giving eight Days Notice to Proſecutor, 7 *Geo. c.* 12. The Act to be deemed a publick Act.

A Warrant to levy a Forfeiture for ſetting on Cloth Buttons, *&c.*

4 Geo. c. 17. Middleſex, ſſ. WHereas A. B. *of*, &c. *hath this Day made Information on Oath before me, that* C. D. *of your Pariſh Taylor, hath lately made, or cauſed to be made, one Cloth Coat for*, &c. *with Buttons (or Button-holes) of Cloth, Serge, Stuff*, &c. *contrary to an Act of Parliament made in the fourth Year of King* George, *whereby he hath forfeited the Sum of Forty Shillings* per *Dozen for the Offence aforeſaid. Theſe are therefore to Command you to ask, demand and receive of the ſaid* C. D. *ſix Pounds, being the Sum his Forfeiture amounts to, for three Dozen of Buttons*, &c. *and if the ſame be not paid in Fourteen Days, that then you levy it by Diſtreſs and Sale of his Goods; one Moiety whereof you are to give to the ſaid* A. B. *the Informer, and the other Moiety apply to the Uſe of the Poor of the Pariſh of*, &c. *aforeſaid. And if the ſaid* C. D. *hath not Goods, whereof a ſufficient Diſtreſs may be taken, then you are to convey him the ſaid* C. D. *to the common Gaol of*, &c. *there to remain, and be kept at hard Labour, for the Space of three Months.* Given, *&c.*

A Warrant to levy the Penalty for Wearing Cloth Buttons, *&c.* on Cloaths.

7 Geo. c. 12. Middx. ſſ. WHereas *Information hath been this Day made on Oath before me*, A. B. *Eſq*; &c. *by* C. D. *of*, &c. *that* E. F. *within your Pariſh hath lately worn one Cloth Coat, with Buttons made of Cloth,*

contrary

contrary to a Statute in that Caſe made: Theſe are therefore to require you, to levy by Diſtreſs and Sale of the Goods of the ſaid E. F. *the Sum of*, &c. *the Penalty he hath forfeited by the Offence aforeſaid, purſuant to the ſaid Statute, being after the Rate of* 40*s.* per *Doz. for the Buttons ſo worn; one Moiety whereof you are to pay to* C. D. *on whoſe Oath the ſaid* E. F. *was convicted of the Offence, and the other Moiety apply to the Uſe of the Poor of the Pariſh*, &c. Given, *&c.*

Calicoes, &c.

BY Stat. 7. *G.* 1. *c.* 7. If any Perſon ſhall uſe or wear in any Apparel, any printed, painted, ſtained or dyed Calicoe, being convicted thereof, by the Oath of one or more Witneſſes before a Juſtice of Peace, they ſhall forfeit the Sum of 5 *l.* to the Informer; and upon Complaint within ſix Days after the Offence, the Juſtice is to ſummon the Party accus'd, and proceed to Examination, and on due Proof, cauſe the Penalty to be levied by Diſtreſs and Sale of Goods, *&c.*

If any Mercer or Draper ſhall expoſe to Sale any ſuch Calicoe, or any Bed, Chair, Window-curtain, or other Furniture, made up or mix'd with Calicoe (unleſs it be for Exportation) every ſuch Perſon ſhall forfeit the Sum of 20 *l.* and Perſons uſing the ſame are liable to the like Penalty: But Calicoes made into Furniture in Families are exempted; and this Act ſhall not extend to Calicoes dyed all blue.

One Moiety of the Penalties inflicted where they exceed 5 *l.* ſhall be paid to the Informer, and the other to the Poor, recoverable by Action of Debt, *&c.* within ſix Months.

Cards and Dice. See Gaming.

Carders, &c.

CArders, Spinſters, Weavers, Fullers, Sheermen, and Dyers, not performing Duty in their Occupations, ſhall yield to the Party grieved, double Damages; to be committed till Payment. One Juſtice to hear and determine Complaints, 4 Edw. 4. c. 1.

Carders,

7 Ja. 1. c. 7. Carders, &c. imbeziling Wool, &c.

Carders, Kembers, Sorters, Spinsters, or Weavers, conveying away, imbezilling, or detaining any Wool or Yarn, deliver'd by Clothier, or any other Person, shall give the Party grieved, such Satisfaction as two Justices, Mayor, &c. shall think fit; if not able, or willing to make Satisfaction, for the first Offence to be whipp'd, or set in the Stocks in some Market-Town, or in any Town where Offence is committed; second Offence to incur the like, or such further Punishment by Whipping, &c. as Justices shall think proper. Conviction by one Witness on Oath, or Confession.

Carriers and Carriages, &c.

3 Car. 1.

CArrier, Waggoner, &c. or Drover, travelling on the Lord's Day, about their Business, shall forfeit 20 s. for every Offence, to be levied, by Distress and Sale, by Warrant from one Justice, for the Use of the Poor.

29 Car. 2, c. 7.

Justices may allow a third Part to Informer. Conviction by View of a Justice, Confession, or two Witnesses. Prosecution in six Months.

Justices of Peace in their Sessions, have Power to fix and settle the Prices of Carriage of Goods by Land, by any common Carrier, which being certified to the Mayors, and Officers of each Market-Town within their Jurisdiction, they are to fix 'em at the publick Market-place, for publick Notice, by 3 & 4 *W. & M. c.* 12.

If a Carrier presume to take more, he forfeits 5 *l.* to be levied by Distress, by Warrant from two Justices, to the Use of the Party grieved.

No Waggon to go with above six Horses.

If any Carrier shall travel with Waggon, Wain, Cart, or Carriage, with above six Horses, Oxen, or other Beasts (except it be for carrying Hay, Straw, Corn, Coal, Timber, Materials for Building, Stone, Ammunition, or Artillery) he shall forfeit 5 *l.* to be levied by Distress and Sale of any of the said Beasts, in three Days; to be employed one Moiety for the Repairing of the Highways, and the other to the Prosecutor, being an Inhabitant in the Parish where the Offence was committed, by *Stat.* 9 *Ann. c.* 18.

Persons employ'd in the Driving, or assisting in the Driving with more than six Horses, are liable to the same Penalty, by *Stat.* 9 *Ann. c.* 18.

The

The ſame Stat. enacts, That any Perſon or Perſons, may diſcover and Proſecute them who Draw with more than ſix Horſes, &c. and ſeize and diſtrain all or any of the Horſes, &c. and deliver the ſame to the Surveyors of the Highways, or other Officer of the Place; and if the 5*l.* be not paid in three Days, the Diſtreſs is to be ſold, and the Money deliver'd to the Juſtice to be diſtributed.

Any Perſon may ſeize and diſtrain.

Surveyors of the Highways, or other Pariſh-Officers, refuſing or neglecting to deliver the Money by them receiv'd to the Juſtice, forfeit 20*l.* to be levied by Diſtreſs and Sale; for want of Diſtreſs, to be committed to the common Gaol 'till Payment. One Moiety of the Forfeiture to the Informer, the other to be laid out in Repairing the Highways. *Stat.* 9 *Ann.* *c.* 18.

Pariſh-Officers not delivering the Money, &c.

If any Perſon refuſe, or neglect to carry a Horſe, &c. ſo diſtrain'd to the Surveyor, or other Pariſh-Officer, he likewiſe forfeits 20 *l.* to be levied and diſpoſed *ut ſupra.*

Surveyors of Highways neglecting to put 6 *Ann.* or any other Law for Repairing Highways, in Execution, forfeit 5*l.*

Surveyors of Highways not putting the Acts in execution.

N. B. The Act made 13 & 14 *Car.* 2. intitled, An Act for providing Carriages, by Land and by Water, for the Uſe of his Majeſty's Navy and Ordnance, and revived *Anno* 1 *Ja.* 2. and continued 4 & 5 *W.* and *M.* for ſeven Years, from 13, 1692, and continued by 11 & 12 *W.* 3. *c.* 13. for ſeven Years, from 29 *Sept.* 1700. As alſo the Act made 1 *Ja.* 2. *c.* 10. for providing Carriages, &c. for the King, are expired, and therefore there needs no more be ſaid of them in this Place.

Stat. 13 & 14 Car. 2. expir'd.

By Stat. 1 *Geo.* no travelling Waggon, &c. with any Burthen, &c. (other than before excepted) ſhould at any Time be drawn in any common Highway with above five Horſes, &c.

But by Stat. 5 *Geo.* 1. this Act is alter'd, and 'tis enacted, That no travelling Waggons, &c. for Hire, ſhall be drawn with more than ſix Horſes, either in Length, or in Pairs, or Side-ways; and no travelling Cart to have more than three Horſes; upon Pain of forfeiting all the Horſes above ſix in the Waggon, and three in the Cart, with all Geers, Accoutrements, &c. to the Uſe of the Seizor.

The Horſes, &c. are to be deliver'd to the Conſtable, or other Pariſh Officer; and Oath to be made of the

the Offence before a Juſtice of Peace, who is thereupon to iſſue his Precept to the Conſtable, &c. to redeliver the Horſes ſeiz'd.

Travelling Waggons to be bound with Tire 2 Inches and a half broad.

Travelling Waggons are to be bound with Streaks, or Tire, two Inches and a half in Breadth, at leaſt, when worn, or not to be drawn with above three Horſes, on Pain of forfeiting all the Horſes exceeding that Number, with the Geers, &c. Streaks ſet on with Roſe-headed Nails, liable to the ſame Penalty. Perſons hindring the Seiſure of Horſes, to be committed for three Months, and forfeit 10 *l.* to be levied on their Goods, if not paid in three Days, by Warrant from one Juſtice. Carriages employ'd in Husbandry, and carrying Cheeſe, Butter, or any one Tree, or Piece of Timber, or any one Stone, or Block of Marble; Caravans, and cover'd Carriages of Noblemen and Gentlemen, for their private Uſe; or Timber, Ammunition, or Artillery, for His Majeſty's Uſe, are excepted.

Perſons proſecuted for any Matter done in Execution of this Act, may plead the General Iſſue, and give this Act and the Special Matter in Evidence, and recover full Coſts.

Perſons in London or Weſtminſter, or within 10 Miles of the ſame, ſhall not carry above ſeven Hundred and a half of Bricks, &c.

By Stat. 6 *Geo. c.* 6. it is enacted, That no Perſon ſhall carry in the Cities of *London* or *Weſtminſter*, or within ten Miles thereof, in Carts or Waggons, having their Wheels bound with Iron, at any one Load, any more than ſeven Hundred and a half of Bricks, one Chalder of Coals, twelve Sacks of Meal, of five Buſhels to the Sack, and twelve Quarters of Malt; And if any Perſon ſhould act contrary, he forfeits one of the Horſes, with the Geers, &c. to any one who will ſeize the ſame. The Penalties to be levied and applied in the ſame Manner as thoſe by 5 *Geo.* relating to Carriages drawn on the Highways.

Oath to be made of the Offence before a Juſtice of Peace, who, on Conviction, is to order the Forfeiture to the Seizor, &c.

There was alſo a good Act of Parliament made, 6 & 7 *W.* 3. *c.* 16. whereby the Juſtices of Peace of the Counties of *Oxford*, *Berks*, *Bucks*, *Wilts*, and *Glouceſter*, in their Quarter-Seſſions, or any five of them, were enabled to make Orders for preventing Abuſes in the Rivers of *Thames* and *Iſis*; and to Aſſeſs the Rates of Water-Carriage in Barges, Boats, &c. but that Act is alſo expired. But by an Act made 3 *Geo.* 1. the Power of reforming Abuſes, and of ſettling the Rates of Water-Carriage on the *Thames*, &c. is veſted in the Com-

Commiſſioners therein named for 9 Years. *Vide* the Act.

A Warrant to levy the Forfeiture of a Carrier, taking more for Carriage of Goods than the Rates aſſeſſed by Juſtices.

Eſſex, ſſ. *WHereas it hath been duly proved before us* W. B. *and* E. S. *Eſquires, two of His Majeſty's Juſtices*, &c. *That* A. B. *of*, &c. *Carrier, lately inſiſted upon, and obliged* C. D. *of*, &c. *to pay the Sum of*, &c. *for Carriage of two large Trunks, from*, &c. *to*, &c. *weighing*, &c. *being after the Rate of*, &c. per *Hundred, which is*, &c. *more than the Price limited, and aſſeſſed by the Juſtices of the Peace, in their laſt* Eaſter *Seſſions, for Carriage of Goods: Theſe are therefore to require you to levy the Sum of* 5 l. *on the Goods and Chattels of the ſaid* A. B. *by Diſtreſs and Sale thereof, which he hath forfeited by the Offence aforeſaid; and that you do pay the ſame, when levied, to the ſaid* C. D. *who is the Party grieved.* Given, *&c.* 3 & 4 W. & M.

An Information againſt a Perſon drawing a Waggon with more than ſix Horſes.

Eſſex, ſſ. The Information of *A. B.* of, *&c.* taken before *W. B.* Eſq; one of His Majeſty's Juſtices of the Peace, for the ſaid County of, *&c.* this Day and Year, *&c.*

WHO ſaith on his Oath, That upon, &c. *laſt paſt, he the ſaid* A. B. *as he was going from*, &c. *to*, &c. *ſaw a Waggon belonging to* C. D. *of*, &c. *in the ſaid County, Carrier, travel through the Pariſh of*, &c. *in the plain Road, ſome Diſtance from any Hill, drawn by ſeven Horſes at length, which ſaid Waggon was loaden with Goods from*, &c. *and was going for* London. 6 Ann.

Jurat' coram me Die
& Anno ſupradict'
W. B.

A Warrant to levy the Forfeiture.

1 Geo. WHereas A. B. *of*, &c. *hath this Day made Oath before me, That upon*, &c. *of this Inſtant*, &c. *he ſaw a Waggon belonging to* C. D. *of*, &c. *in the ſaid County, Carrier, travel through the Pariſh of*, &c. *drawn by ſeven Horſes, contrary to an Act of Parliament lately made, whereby he hath forfeited the Sum of* 5 l. *of*, &c. *one Moiety thereof to the ſaid* A. B. *as Proſecutor, and the other Moiety to be employ'd in Amending the Highways in the ſaid Pariſh of*, &c. *Theſe are therefore in His Majeſty's Name to Command you, and every of you, upon Receipt hereof, to levy the ſaid Sum of* 5 l. *by Diſtreſs of all, or any of the Horſes that drew the ſaid Waggon, as aforeſaid, to be kept for the Space of three Days at the Charges of the Owner thereof, and then, if they are not redeemed, you are to appraiſe and ſell the ſame, and bring the Monies ariſing by ſuch Sale, to me, or ſome other Juſtice of the Peace, to be diſtributed as above, according to the Direction of the Act of Parliament in that Caſe made and provided.* Given, *&c.*

A Warrant for Delivery of Horſes ſeized to the Seizor, for travelling with Waggons contrary to Law.

5 Geo. Eſſex, ſſ. WHereas A. B. *of*, &c. *hath this Day made Information on Oath before me* W. B. *Eſq; one of His Majeſty's Juſtices of the Peace for the County aforeſaid, That* C. D. *Waggoner, on*, &c. *laſt paſt, in the Highway leading from*, &c. *to*, &c. *travell'd with a Waggon drawn with five Horſes the Wheels whereof were bound with Tire not of the Breadth of two Inches and a half, as a late Act of Parliament directs, whereby he has forfeited all the Horſes above the Number of Three, and the ſame have been ſeiz'd, and deliver'd over to the aforeſaid Conſtable of*, &c. *Theſe are therefore to Command you the aforeſaid Conſtable, to redeliver the Horſes above-mention'd to be forfeited, being Two in Number, and all the Geers*, &c. *to the ſaid* A. B. *the Seizor, for his ſole Uſe, he paying the reaſonable Charges for Keeping*, &c. Given, *&c.*

A War-

A Warrant to levy the Forfeiture for carrying more Coals than allowed by Law.

London, ſſ. *WHereas Information hath been made on Oath this Day before me,* A. B. *Eſq; one of His Majeſty's Juſtices of the Peace for the County of* Middleſex, *by* E. F. *of,* &c. *that* C. D. *Carman, on,* &c. *laſt, in the City of* London, *particularly in,* &c. *Street of the ſaid City, travell'd with a Cart, the Wheels whereof were bound with Iron, having therein for Loading, one Chalder and a Quarter of Coals,* &c. *contrary to the Statute made in the Sixth Year of King* George: *Theſe are therefore to Command you (the Conſtable) to deliver to the ſaid* E. F. *the Informer, for his ſole Uſe, one of the Horſes belonging to the ſaid Cart, with the Geers, Bridles, and Halters therewith uſed by him the ſaid* E. F. *ſeized as and for a Forfeiture for the Offence aforeſaid, according to the Direction of the Statute.* Given, *&c.* 6 Geo.

Caſual Death. See Homicide.

Cattle.

THree Juſtices (*Quorum unus*) may enquire by Oaths of twelve Men, Examination of Witneſſes, *&c.* of the malicious Maiming of any ſort of Cattle. 22 & 23 Car. 2. c. 1.

Cattle, dead or alive, (except for Proviſion for the Veſſel) may be ſeiz'd by Conſtable, if imported, and may be kept for forty-eight Hours in ſome convenient Place, within which Time, if Owners, or any for them, do not make it appear to ſome Juſtice, by Oath of two Witneſſes, that the ſame were not imported from beyond Sea, then the ſaid Cattle ſhall be forfeited, one Moiety for the Poor, the other to the Informer, or Seizor. Exception for Cattle from the Iſle of *Man*, not exceeding 600 Yearly. 18 Car. 2. c. 2. Cattle imported may be ſeized.

By this Stat. any may ſeize Cattle imported. Inhabitants of any Pariſh, *&c.* where Cattle are imported, in Default of Seizing, ſhall forfeit 100 *l.* for the Uſe of the Houſe of Correction within the County, *&c.* Every Ship, or, *&c.* with Tackle, *&c.* bringing over Cattle, dead or alive, ſhall be forfeited, and ſold within a Year after the Offence committed. Maſters, Ma- 20 Car. 2. c. 7.

riners, and Seamen, concern'd in the Importation, ſent to Gaol for three Months. Conviction before one Juſtice, Mayor, &c.

32 Car. 2. c. 7. By this Stat. Seizors of Cattle, &c. imported, except as before excepted) ſhall within ſix Days after Conviction, and Forfeiture thereof, cauſe the Cattle to be kill'd. Hides and Tallow of the great Cattle, Sheep, and Swine for the Uſe of the Seizor, the Remainder for the Poor; to be diſtributed by the Church-Wardens and Overſeers. Seizor, or Pariſh-Officer, neglecting their Duty, forfeit 40*s.* for every great Cattle, and 10*s.* for every Sheep and Swine, to the Poor and Informer, by Diſtreſs and Sale, by Warrant from one Juſtice. Conviction by Confeſſion, View of Juſtice, or one Witneſs (other than Informer) upon Oath; for want, to be committed to Gaol for three Months, without Bail, &c. Mutton or Lamb imported, if expos'd to Sale, ſubject to the ſame Penalties.

3 & 4 Edw. 6. c. 19. Cattle muſt be bought in open Fair and Market. Cattle muſt be bought in open Fair, or Market, and they muſt not be ſold again in the ſame Fair, or Market, on Forfeiture of double the Value.

Cattle bought in *Smithfield*-Market, if brought into the ſame Market again to be ſold, ſhall be ſeized as forfeited for the Uſe of the Lord-Mayor, &c.

5 & 6 Edw. 6. c. 14. Buying and Selling alive, within five Weeks afterwards, the Forfeiture is double the Value: He muſt keep them for that Time in ſome Paſture.

Offence muſt be enquir'd into at Quarter-Seſſions. This Offence is to be determin'd in Quarter-Seſſions by Inquiſition, Bill, Preſentment, Information, or Proof of two Witneſſes upon Oath. Juſtices may appoint one Moiety for the King, and award a *Fieri facias*, or *Capias* to the Proſecutor for the reſt.

Muſt be Proſecuted in two Years. Offence muſt be proſecuted within two Years after 'tis committed.

Drovers licenſed by three Juſtices, (*Quorum unus*) may buy Cattle to be ſold at a reaſonable Price in Fairs and Markets, forty Miles Diſtance from the Place where they bought them. 5 *Edw.* 6. *c.* 14.

There was an Action brought in the Sheriffs Court in *London*, upon the before-mention'd Statute, and it was held, that it being a Penal Law, the Proſecution ſhould be as directed by the Statute, *viz.* at the Seſſions. *Lat h* 192.

In an Information brought for buying Cattle, and ſelling them again in the ſame Market, the Judgment muſt be *quod capiatur*, and not *in miſericordia*, becauſe 'tis a Contempt, and puniſhable by Impriſonment. *Godb.* 349.

He who keeps 120 Sheep on his Paſtures, which are fit to Depaſture Milch-Cows, and which are not common, ſhall for every ſixty Sheep keep one Milch-Cow; and for every 160 Sheep, ſhall rear one Calf. The Penalty is 20 *s.* *per* Month for not keeping a Cow, and 20 *s.* for not rearing a Calf; one Half to the King, the other to the Party who proſecutes within a Year after the Offence.

He who keeps 120 Sheep, for every 60 Sheep muſt keep one Cow, &c.

Juſtices in Seſſions have Power to hear and determine the ſaid Offences. 1 & 2 *P. & M. c.* 3. 13 *Eliz. c.* 25. 7 *Ja.* 1. *c.* 8.

No Man ſhall keep in his Poſſeſſion, at one Time, above 2000 Sheep, to be accounted after the Rate of Six-ſcore to the Hundred; the Penalty is 3 *s.* 4 *d.* for every Sheep above that Number.

25 Hen. 8. c. 13. None to keep above 2000 Sheep at once.

Proſecution muſt be within a Year; and it may be before Juſtices in Seſſions. Penalty to be divided between the King and Proſecutor.

But a Perſon may keep as many Sheep as he can upon Lands of his own Inheritance; or as Tenant in Dower, or by the Courteſy.

Lambs are not to be accounted Sheep till *Midſummer* Twelve-months after their Fall.

If any one has more than 2000 Sheep, either as Executor, or by expreſs Deviſe, or by Marriage, they ſhall not incur this Penalty, ſo as within one Year afterwards, they put off as many as wou'd reduce the Number to 2000 at the End of the Year.

Alſo an Infant, who hath above that Number deviſed to him, ſhall not be puniſh'd during his Nonage, nor any Perſon for him.

No Man ſhall take above two Farms, except he dwell in the ſame Pariſh where his Farms are, under Penalty of 3 *s.* 4 *d.* *per* Week, between the King and Proſecutor; but the Proſecution muſt be at the Aſſizes, and not at the Seſſions.

Perſons carrying Sheep over Sea, or procuring them to be carried, forfeit all their Goods for ever; one Moiety to the King, his Heirs, *&c.* the other to the Informer, and withal ſhall ſuffer Impriſonment for a Year; and after that have his left Hand cut off, and put up in the Market-Place: Second Offence Felony. Juſtices at Quarter-Seſſions may hear and determine Offences againſt this Act. 8 *El. c.* 3.

riners, and Seamen, concern'd in the Importation, ſent to Gaol for three Months. Conviction before one Juſtice, Mayor, &c.

32 Car. 2. c. 7. By this Stat. Seizors of Cattle, &c. imported, except as before excepted) ſhall within ſix Days after Conviction, and Forfeiture thereof, cauſe the Cattle to be kill'd. Hides and Tallow of the great Cattle, Sheep, and Swine for the Uſe of the Seizor, the Remainder for the Poor; to be diſtributed by the Church-Wardens and Overſeers. Seizor, or Pariſh-Officer, neglecting their Duty, forfeit 40*s.* for every great Cattle, and 10*s.* for every Sheep and Swine, to the Poor and Informer, by Diſtreſs and Sale, by Warrant from one Juſtice. Conviction by Confeſſion, View of Juſtice, or one Witneſs (other than Informer) upon Oath; for want, to be committed to Gaol for three Months, without Bail, &c. Mutton or Lamb imported, if expos'd to Sale, ſubject to the ſame Penalties.

3 & 4 Edw. 6. c. 19. Cattle muſt be bought in open Fair and Market. Cattle muſt be bought in open Fair, or Market, and they muſt not be ſold again in the ſame Fair, or Market, on Forfeiture of double the Value.

Cattle bought in *Smithfield*-Market, if brought into the ſame Market again to be ſold, ſhall be ſeized as forfeited for the Uſe of the Lord-Mayor, &c.

5 & 6 Edw. 6. c. 14. Buying and Selling alive, within five Weeks afterwards, the Forfeiture is double the Value: He muſt keep them for that Time in ſome Paſture.

Offence muſt be enquir'd into at Quarter-Seſſions. This Offence is to be determin'd in Quarter-Seſſions by Inquiſition, Bill, Preſentment, Information, or Proof of two Witneſſes upon Oath. Juſtices may appoint one Moiety for the King, and award a *Fieri facias*, or *Capias* to the Proſecutor for the reſt.

Muſt be Proſecuted in two Years. Offence muſt be proſecuted within two Years after 'tis committed.

Drovers licenſed by three Juſtices, (*Quorum unus*) may buy Cattle to be ſold at a reaſonable Price in Fairs and Markets, forty Miles Diſtance from the Place where they bought them. 5 *Edw.* 6. *c.* 14.

There was an Action brought in the Sheriffs Court in *London*, upon the before-mention'd Statute, and it was held, that it being a Penal Law, the Proſecution ſhould be as directed by the Statute, *viz.* at the Seſſions. *Lat. h* 192.

In an Information brought for buying Cattle, and ſelling them again in the ſame Market, the Judgment muſt be *quod capiatur*, and not *in miſericordia*, becauſe 'tis a Contempt, and puniſhable by Impriſonment. *Godb.* 349.

He who keeps 120 Sheep on his Paſtures, which are fit to Depaſture Milch-Cows, and which are not common, ſhall for every ſixty Sheep keep one Milch-Cow; and for every 160 Sheep, ſhall rear one Calf. The Penalty is 20 *s.* *per* Month for not keeping a Cow, and 20 *s.* for not rearing a Calf; one Half to the King, the other to the Party who proſecutes within a Year after the Offence.

He who keeps 120 Sheep, for every 60 Sheep muſt keep one Cow, &c.

Juſtices in Seſſions have Power to hear and determine the ſaid Offences. 1 & 2 *P. & M.* *c.* 3. 13 *Eliz.* *c.* 25. 7 *Ja.* 1. *c.* 8.

No Man ſhall keep in his Poſſeſſion, at one Time, above 2000 Sheep, to be accounted after the Rate of Six-ſcore to the Hundred; the Penalty is 3 *s.* 4 *d.* for every Sheep above that Number.

25 Hen. 8. c. 13. None to keep above 2000 Sheep at once.

Proſecution muſt be within a Year; and it may be before Juſtices in Seſſions. Penalty to be divided between the King and Proſecutor.

But a Perſon may keep as many Sheep as he can upon Lands of his own Inheritance; or as Tenant in Dower, or by the Courteſy.

Lambs are not to be accounted Sheep till *Midſummer* Twelve-months after their Fall.

If any one has more than 2000 Sheep, either as Executor, or by expreſs Deviſe, or by Marriage, they ſhall not incur this Penalty, ſo as within one Year afterwards, they put off as many as wou'd reduce the Number to 2000 at the End of the Year.

Alſo an Infant, who hath above that Number deviſed to him, ſhall not be puniſh'd during his Nonage, nor any Perſon for him.

No Man ſhall take above two Farms, except he dwell in the ſame Pariſh where his Farms are, under Penalty of 3 *s.* 4 *d.* *per* Week, between the King and Proſecutor; but the Proſecution muſt be at the Aſſizes, and not at the Seſſions.

Perſons carrying Sheep over Sea, or procuring them to be carried, forfeit all their Goods for ever; one Moiety to the King, his Heirs, *&c.* the other to the Informer, and withal ſhall ſuffer Impriſonment for a Year; and after that have his left Hand cut off, and put up in the Market-Place: Second Offence Felony. Juſtices at Quarter-Seſſions may hear and determine Offences againſt this Act. 8 *El.* *c.* 3.

Information on 5 & 6 *Edw.* 6. *c.* 14. for buying live Cattle, and ſelling them again within five Weeks.

5 & 6 Ed. 6. c. 14. Two Witneſſes.

Eſſex, ſſ. A. B. qui tam pro Domino Rege quam pro ſeipſo in hac parte ſequitur ven' hic in Cur' in propria perſona ſua quinto die Januarii, Anno, &c. tam pro eodem D'no Rege quam pro ſeipſo dat Cur' hic intelligi & informari quod C. D. nuper de H. in Com. &c. 28 die Novembris Anno ſupradicto & diverſis aliis diebus & vicibus inter prefat' 28 diem Novemb. & diem exhibitionis hujus informationis apud H. pred' in Com. pred' emebat de diverſis perſonis prefat' A. B. qui tam, &c. adhuc ignot' viginti boves vivos precii cujuſlibet bovis pred' quatuor libratum ac quod idem C. D. eosdem boves vivos non cuſtodivit & depaſtus fuit per ſpatium quinque ſeptimanarum in ſuis propriis domibus terris firmariis aut in talibus terris ubi habuit Herbagium vel communiam paſture per conceſſionem ſive preſcriptionem nec in aliqua eorundem ſed pred' C. D. infra tempus pred' ult' mentionat' pred' viginti boves apud H. pred' in Com. pred. vivos revendidit contra formam Statuti in hujuſmodi caſu edit' & provis' per quod pred. C. D. forisfac. centum & octoginta libras legalis Monete Magn' Britan' videlicet, duplicem valorem catallorum pred. ſic per ipſum modo & forma pred' empt' & illicite revendit', unde idem A. B. qui tam, &c. petit adviſamentum Curie in premiſſis ac debitum legis proceſſum verſus prefat' C. D. in hac parte fieri quodque ipſe idem A. B. qui tam, &c. medietatem forisfact' pred' habeat juxta formam Statut. pred' &c.

Indictment for pulling Wool from live Sheep.

Eſſex, ſſ. JUR. &c. quod A. B. nuper de H. in Com. Eſſex, pred' paſtor 18 die Maij, &c. clauſum R. B. apud H. predict' in Com. pred. fregit & intravit ac lanam viginti Ovium valoris viginti ſolidorum de bonis & catallis predict' R. B. apud H. predict' in Com. predict' a corporibus ovium pred' ad tunc & ibidem' exiſten' expilabat & lanam predictam ſic expilatam felonice cepit & aſportavit contra Pacem dict. Dom. Reg. Coron. & Dignitat. ſuas. &c.

Thoſe

Thoſe that maim Cattle in the Night, ſhall forfeit treble Damages. 22, 23 Car. 2. c. 1.

Certiorari.

THIS is a Writ to remove a Record from an inferior Court; and ſometimes 'tis iſſued out of the Chancery, and then 'tis returnable *in Cancellaria noſtra*; ſometimes out of the King's Bench, and then 'tis *Nobis mittatis*; and ſometimes out of the Common Pleas, and then 'tis *coram Juſticiariis noſtris de Banco*; and the Juſtices to whom 'tis directed, muſt make a Return accordingly. Certiorari, what it is.

If deliver'd after the Jury are gone out to conſider of their Verdict, 'tis too late; for it cannot be deliver'd after the Jury is ſworn. *P.* 9 *W.* And yet it will lie after Conviction, and before Judgment; but this muſt be underſtood where a Writ of Error doth not lie.

Upon a Conviction at the Aſſizes, if the Judge doubt of the Judgment to be given, he may remove the Record into *B. R.* by *Certiorari. Mich.* 2 *Ann.* Tho' a *Certiorari* is ſeldom granted to remove Indictments found at the Aſſizes; but it may be granted for ſome ſpecial Cauſe, and in all Caſes where it is not expreſly denied by ſome Statute. 3 *Mod.* 95.

This Writ may either be to remove an Indictment, or the Tenor thereof, or a Recognizance, *&c.* and it removes the whole Record, and therefore no *Alias Certiorari* is to be allowed. *Style* 359. In *London* the Tenor of the Record only is return'd on it, in other Places the Record it ſelf. *Sid.* 155, 230.

But 'tis not to be allowed, unleſs the Party indicted be bound with Sureties (ſuch as the Juſtices Not to be allow'd unleſs Party be bound with Sureties.

Juſtices do approve) to pay the Proſecutor ſuch Coſts and Damages as the Juſtices ſhall aſſeſs within a Month after Conviction. 21 *Jac.* 1. *cap.* 18.

How granted in Term.

And, by a later Statute, 'tis not to be granted in Term-time, but upon Motion in Court; and the Party who deſires it, muſt find Bail, *viz.*

Two *Manucaptors* before one or more Juſtices of the Peace, in 20*l.* to plead to the Indictment, and at his own Charge to procure the Iſſue to be joined, and to be tried at the next Aſſizes in that County where the Indictment was found, after the Return of the *Certiorari*, if not in *London*, *Weſtminſter*, or *Middleſex*; but if in any of thoſe Places, then the next Term after the *Certiorari* granted; and if ſuch Recognizance is not given before the *Certiorari* is allowed, they may proceed, tho' deliver'd.

5 & 6 W. & M. c. 5.

The Recognizance and *Certiorari* muſt be certified in *B. R.* and there filed, and the Name of the Proſecutor indorſed.

If the Party deſiring the *Certiorari* be convicted, then *B. R.* may give Coſts; and if not paid within ten Days after Demand, then on Affidavit made of the Refuſal, an Attachment goes, *&c.* and the Recognizance not to be diſcharged 'till the Coſts are paid.

How in the Vacation.

In Vacation any Judge of *B. R.* may grant it. He muſt indorſe his Name, and the Name of the Party deſiring it; and before the Allowance, the Party muſt find ſuch Sureties as aforeſaid.

And by a ſubſequent Statute, a Recognizance taken before a Judge of *B. R.* with like Condition as in the former Act, which the Judge muſt mention on the Back of the Writ, and ſubſcribe his Name, ſhall be as good as if taken before a Juſtice of Peace in the proper County.

When an Appeal lies to the Seſſions, no Order ſhall be removed by *Certiorari*, 'till after the Appeal had; if it be, it ſhall be ſent back by *Procedendo*.

But

But now by a Statute 5 *Geo.* 2. 'tis enacted, That no *Certiorari* ſhall be allowed, to remove any Judgment, or Order of any Juſtice or Juſtices of the Peace, unleſs the Party or Parties proſecuting ſuch *Certiorari* before the Allowance thereof, ſhall enter into a Recognizance, with ſufficient Sureties before one or more Juſtices of the Peace of the County or Place, or before the Juſtices at their General Quarter-Seſſions, or General Seſſions, where ſuch Judgment or Order ſhall have been given or made, or before any one of his Majeſty's Juſtices of the ſaid Court of King's Bench, in the Sum of fifty Pounds, with Condition to proſecute the ſame at his and their own Coſts and Charges, with Effect, and without any wilful or affected Delay; and to pay the Party or Parties in whoſe Favour, and for whoſe Benefit ſuch Judgment or Order was given or made, within one Month after the ſaid Judgment or Order ſhall be confirmed, their full Coſts and Charges, to be taxed, according to the Courſe of the Court where ſuch Judgments or Orders ſhall be confirmed; and in Caſe the Party or Parties proſecuting ſuch *Certiorari*, ſhall not enter into ſuch Recognizance, or ſhall not perform the Conditions aforeſaid, it ſhall and may be lawful for the ſaid Juſtices to proceed and make ſuch further Order or Orders, for the Benefit of the Party or Parties for whom ſuch Judgment ſhall be given, in ſuch Manner as if no *Certiorari* had been granted.

The Recognizance or Recognizances to be taken as aforeſaid, ſhall be certified into the Court of King's Bench at *Weſtminſter*, and there filed with the *Certiorari*, and Order or Judgment removed thereby; and if the ſaid Order or Judgment ſhall be confirmed by the ſaid Court, the

Perſons entitled to ſuch Coſts for the Recovery thereof, within ten Days after Demand made of the Perſon or Perſons who ought to pay the ſaid Coſts, upon Oath made of the making ſuch Demands, and Refuſal of Payment thereof, ſhall have an Attachment granted againſt him or them by the ſaid Court, for ſuch Contempt; and the ſaid Recognizance ſo given upon the Allowing of ſuch *Certiorari*, ſhall not be diſcharged until the Coſts ſhall be paid, and the Order ſo confirmed ſhall be complied with and obeyed.

Juſtices ought to make a Return to a *Certiorari*, though the Party will not give Bail, and the Statute demands it to be previouſly given. 1 *Sid.* 70. *Black.* 77.

The Condition of the Recognizance, where the *Certiorari* is brought to a Juſtice of Peace, and not to a Judge of *B. R.*

THE Condition of this Recognizance is ſuch, That whereas the above-bound A. B. *hath proſecuted a* Certiorari, *returnable*, &c. *to remove into the* King's Bench *an Indictment found againſt him, at*, &c. *for*, &c. *If therefore the ſaid* A. B. *ſhall plead to the ſaid Indictment, ſo removed as aforeſaid, ſo as Iſſue may be joined upon the ſame; and ſhall likewiſe at his own Charge procure the ſaid Iſſue to be tried at the next Aſſizes after the Return of the ſaid* Certiorari, *to be held for the County of*, &c. *where the ſaid Indictment was found, then this Recognizance to be void*, &c.

The

The Return of a *Certiorari* endorſed on the Back of the Writ.

EXecutio iſtius brevis patet in quadam Scedula huic brevi annex'.

A. B. *Ar'*.

The Schedule, or Certificate of the Record, in a Piece of Parchment by it ſelf, and filed to the Writ.

EGO A. B. Ar' unus Cuſtod' pacis ad pacem Domini Regis in dict' Com' Eſſex conſerband' necnon diverſas Felonias Tranſgreſſion' & alia malefacta in eodem Com. perpetrat' audiend' & terminand' Aſſign' virtute iſtius Brevis mihi deliberat' Indictament' illud unde infra fit mentio una cum omnibus illud tangentibus in Cancellariam * dict. Dom. Regis diſtincte & aperte ſub Sigillo meo Certifico in cujus rei teſtimonium ego præfat' A. B. his præſentibus Sigillum meum appoſui Dat. &c. apud, &c.

* Or into the King's Bench.

It was formerly doubted whether a *Certiorari* would lie to the *Cinque-Ports*, to remove an Indictment for Felony; but it hath ſince been granted to remove an Indictment out of the Court of *Rumney*, upon a Suggeſtion that the Defendant could not have an indifferent Trial before the Steward there, tho' it was inſiſted that they had an ancient Charter to exempt them from the Juriſdiction of *B. R.* and from Juſtices of *Oyer* and *Terminer*, and of *Aſſize*; but *per Curiam* a Charter of Exemption from the *Oyer* and *Terminer* was never heard of before. *Mich.* 8. *W.* 3. *Rex* verſus *Bird.*

It lies to the Cinque Ports.

Certiorari's have been allowed to remove Indictments for Murder, out of a County Palatine; for though the King hath granted them *Jura Regalia*, yet he did not thereby intend to exclude himſelf. *March* 165.

It hath been denied to remove an Indictment of Barretry, found before the Juſtices of Gaol-Delivery, without ſome ſpecial Cauſe. *P.* 9. *W.* 3. againſt the Opinions in *Poph.* 144. *Latch* 12. *Cr.* 484.

And notwithſtanding the Stat. of 26 *Hen.* 8. *cap.* 6. it was doubted whether it ſhould be granted or not,

And into Wales.

to

to remove an Indictment of Petit Treaſon at the Grand Seſſions in *Angleſea*, becauſe the Indictment was taken in a *Welch* County. *Cr. Car.* 332.

But now this Doubt is reſolved, for it hath been granted in Caſe of Man-ſlaughter and Murder, where the Indictments have been found in *Welch* Counties. 1 *Vent.* 93, 146.

'Tis true, eight Years after the Statute of 26 *Hen.* 8. another Act was made, which gave the Juſtices in *Wales* Power to hold Pleas of the Crown in as large a Manner as the Chief Juſtice of *England* may do; but this is not a Repeal of the former Act, for tho' it gives them Power, *&c.* it does not exclude *B. R.* without negative Words.

A *Certiorari* was awarded to the Mayor and Juſtices of *Dover*, before whom an Indictment of Felony was taken, and not to the Lord-Warden, *&c.* becauſe the Juſtices hold Plea by Virtue of their Commiſſion of the Peace, and not by their antient Charters. *Cr. Car.* 252, 264.

While one Indictment for a forcible Entry was pending, another was brought againſt the ſame Perſon for the ſame Force, *&c.* the firſt Indictment was removed, and the Juſtices awarded Reſtitution upon the ſecond; but before it was executed, a *Certiorari* was deliver'd to one of the Juſtices to remove the ſecond, who made ſome Delays, 'till the Party had Reſtitution; and that Indictment being alſo removed, the Complainant had Reſtitution, and the Juſtice was reproved by the Court, becauſe the Delivery of the Writ is a *Superſedeas* to their Proceedings. *Yelv.* 32.

But in no Caſe forbid by Statute.

It may be granted to remove Orders from an inferiour Juriſdiction, where the Denying it is not expreſly enjoin'd by ſome Stat. as in Caſes of Baſtardy, the Act ſays, That the two next Juſtices may take Order, *&c.* and no *Certiorari* is mentioned; which ſhews that the Law-makers intended that ſuch Order might be removed, otherwiſe they would have enacted, that no *Certiorari* ſhall lie. 3 *Mod.* 95.

It hath been awarded to remove a Preſentment in a *Leet*, upon the Stat. 5 *Eliz.* for uſing a Trade without being an Apprentice, notwithſtanding the Stat. of 31 *Eliz. Sid.* 289.

If Proceedings be removed by *Certiorari*, and after ſent back by *Procedendo*, the Bail is for ever diſcharged. *Co.* Bail and Mainprize, 26.

A Fine ſet by the Seſſions upon the Grand Jury, may be removed.

'Tis not grantable after a Fine eſtreated in the *Exchequer*, becauſe it then concerns the King, and cannot be removed without the Conſent of the Attorney-General. *Hardres* 409.

Nor after a Fine eſtreated into the Exchequer.

Nor to remove an Indictment of Felony out of an inferiour Court, without ſhewing ſome ſpecial Cauſe.

It cannot be granted to remove an Information before the Commiſſioners of Exciſe, becauſe the Stat. of 12 *Car.* 2. gives an Appeal to the Seſſions, and a Clauſe that no *Certiorari* ſhall lie.

Nor to Commiſſioners of Exciſe, and in other Caſes as follow.

It was denied for removing a Preſentment before the Juſtices in *Eyre*, for cutting Wood in a Foreſt, for that would take away the Juriſdiction of thoſe Juſtices who may puniſh Offences by the Foreſt-Laws, which are not puniſhable elſewhere. *Sid.* 296.

So was it denied to remove a Preſentment before Commiſſioners of Sewers, *&c.* the Party ſuggeſting that he ought not to repair the Sewer, becauſe it may be tried before the Commiſſioners, as well as a Nuſance in a Court-Leet; but if the Party will make Oath that a Traverſe was denied, then it may be granted.

It was denied to move an Order of Seſſions for electing a Conſtable, that the Order might be confirmed by *B. R.* but the Court made a Rule for a *Mandamus* to ſwear him. *Style* 127.

It was denied to remove an Information in the Mayor's Court of *London*, againſt a *Wood-monger*, grounded on an Act of Common Council, unleſs ſuch Act appear to be againſt Law. *Style* 211.

The Record it ſelf is not removed out of *London*, but *tenorem* only; for by Virtue of their Charter the Record remains there ſtill; and therefore, if there ſhould be a Miſtake in the Return, it may be amended: But 'tis a Queſtion whether this may be done in any other County; and 'tis for this Reaſon that no *Alias Certiorari* will be granted, becauſe the Record is removed in all other Places by the firſt Writ. *Sid.* 155, 230.

Record it ſelf not removed out of London, but only Tenorem.

The Indictment was taken *Jan.* 25. and the *Certiorari* was of *Michaelmas* Term preceding; the Record was not removed. *Sid.* 317.

It is always denied to remove Indictments of Forgery, or Perjury. *Sid.* 54. becauſe when removed, ſeldom proſecuted.

Where

Where an Appeal lies to the Seſſions, no Order can be removed by *Certiorari* 'till the Appeal is heard, if it be, it is to be ſent back by *Procedendo*. 1 *Salk.* 147.

The Defendant being convicted on an Indictment on the Statute 14 *Car.* 2. for beating certain Officers, obtain'd a *Certiorari*, and upon a Motion for a *Procedendo*, it was inſiſted that a *Certiorari* was not proper after a Conviction, becauſe the Juſtices who tried the Fact were the moſt proper to ſet the Fine; but adjudg'd that a *Certiorari* lies after Conviction, becauſe in ſome Caſes a Writ of Error will not lie: 'Tis true, in this Caſe it will, becauſe the Proceedings are grounded on an Indictment; and therefore the Party may bring a Writ of Error; for which Reaſon a *Procedendo* was granted. 1 *Salk.* 149.

A *Certiorari* is never granted to remove Orders of Juſtices where an Appeal lies to the Seſſions before the Matter is determin'd upon the Appeal; and if an Order ſhould be removed before that Time, then before 'tis filed above, the Party may there object againſt the *Certiorari*, and the Order ſhall be ſent down again; but after the Time for Appeal is expired 'tis too late. 1 *Salk.* 147.

Certiorari was granted to remove the Order againſt *A.* and *B.* and the Order was made againſt *A.* alone; adjudged that the Order was not removed. 1 *Salk.* 15.

Denied to remove a Fine eſtreated into the Exchequer without the Attorney-General's Conſent. *Hard.* 409.

A *Certiorari* was directed to the Commiſſioners of Sewers, and brought to their Clerk, who refuſed to allow it out of Court; but the Commiſſioners ought to make the Return. *Mich.* 8. *W.* 3. *B. R. Style* 90. *contra.*

Juſtices muſt return it, tho' Bail be not put in.

The Juſtices muſt return it, though Bail be not put in according to the Statute. *Sid.* 70. *Hill.* 13 & 14 *Car.* 2. *B. R.*

The Return of a *Certiorari* was in Paper, and for that Reaſon held not good. *Mich.* 4 *W.* 3. *B. R.*

The Party cannot wave a *Certiorari* when it is once deliver'd, for then the Court will require a Return thereof. *Hill. W.* 3. *B. R.*

The *Cuſtos Rotulorum* is Keeper of the Records; and yet, upon a *Certiorari*, the Juſtices themſelves muſt make the Return, becauſe the Writ is directed to them. *Hob.* 135.

Attach-

Attachment againſt Juſtice, for Fining one upon a forcible Entry after *Certiorari* deliver'd to him. *Style* 359.

If there be Variance between the *Certiorari* and the Record which is to be removed, the Juſtices need not to certify ſuch Record. *Keeble* 207.

If a *Certiorari* come to remove the Indictment of *A.* in which ſome others are indicted with him, yet the Juſtice need only to certify what concerns *A.* for altho' they are jointly named, yet they are ſeverally indicted. 6 *Ed.* 4. 5.

If in a *Certiorari* to remove a Recognizance, there be theſe Words, *viz.* (With all Matters concerning the ſame, as fully as before you they were taken, *&c.*) the Juſtices, together with the Recognizances, muſt certify the Examination taken, or the Warrant whereby the Party was brought before them, *&c.* but the Return need not certify more than the *Certiorari* requireth.

Upon a *Certiorari* to remove an Indictment of a Riot, or a forcible Entry, *&c.* the Return muſt have theſe Words, *nec non ad diverſas felonias*, or elſe it is inſufficient. 12 *H.* 7. 24. 2 *R.* 3. 9. *Bro. Indictment*, 32, 50.

If *Certiorari* be brought, and Bail tendred to the Juſtices, the Proceedings after are *coram non judice*. *March* 27. *Trin.* 15 *Car.* 1.

Juſtice of Peace may ſend an Indictment into the *K. B.* by *Certiorari* certified, or Delivery of it *per proprias manus*, and not by another. *Palm.* 277.

The Court inclined that nothing can be removed by *Certiorari*, if it be deliver'd to the Juſtices after the Time of its Return. *Hill.* 17 & 18 *Car.* 2. *Rode's Caſe* in *B. R.*

If any Indictment be againſt any Perſon for not Repairing Highways, Cauſeways, Pavements, or Bridges, and the Title to repair the ſame, may come in Queſtion upon ſuch Suggeſtion, and *Affidavit* made thereof, a *Certiorari* may be granted to remove the ſame into the King's Bench, any Law to the contrary notwithſtanding, by 5 & 6 *W.* & *M. cap.* 4.

Where Title comes in queſtion, Certiorari may be granted, any Law to the contrary notwithſtanding.

The *Certiorari* may be ſometimes to remove and ſend up the Record it ſelf; and ſometimes only the Tenor of the Record (as it is worded); and it muſt be obeyed accordingly. *Plowd.* 393.

No

No *Certiorari* ſhall be granted to remove a Recognizance, except the Writ be ſign'd by the Chief Juſtice, or one of the Juſtices of the Court. 1 & 2 *P. & M.* 14.

A *Certiorari* is good, though it do not mention any Cauſe of Removal. *Lamb. I. p.* 514.

Challenge. See Juries.
Chance-Medly. See Homicide.
Cheating and Couzening. See Falſe Tokens.

Church and Church-wardens, &c.

ANY Man may build a Church or Chapel, but the Law takes no Notice of it as ſuch, 'till it is conſecrated; and therefore the Queſtion, whether Church or Chapel, muſt be tried by the Certificate of the Biſhop; which being done, the Pariſhioners ought then to repair it, and to keep up the Encloſures and Fences round it.

If it be a Queſtion, whether 'tis a Mother-Church, or only a Chapel belonging to it, and any Proof can be made, that the Sacraments have been adminiſtred in the Chapel, and the Dead buried there, then 'tis counted a diſtinct Church by the Law.

None can give leave to bury in the Church but the Parſon only.

When 'tis built, neither the Biſhop or Church-wardens can give Leave to bury there, but the Parſon only, becauſe the Freehold of the Soil is in him. 1 *Cr.* 367.

By 5 & 6 *Edw.* 6. *cap.* 4. he who is convicted of Striking with a Weapon in Church, or Church-Yard, ſhall have one of his Ears cut off; and if he have no Ears, ſhall be burned in the Cheek with the Letter *F.* which is for *Fighting*.

A Man was indicted at the Seſſions in *Gloceſter*, for Striking with a Weapon in the Church-Yard; it was removed into *B. R.* and moved that he might be admitted to a Fine, but was deny'd, becauſe the Statute appoints another Puniſhment, *viz.* the Loſs of an Ear, as well as a Fine; and therefore he was forced to traverſe the Indictment. *Palmer* 344.

Dethick's Caſe. C. Eliz. 234, 606. 2 [illegible]. 188, 24[illegible]

Where 'tis ſet forth, *quod percuſſit*, if the Word *malitioſe* is omitted, 'tis naught. *Noy* 171, 172.

An Indictment alone, with an Outlawry upon it, is not ſuch a Conviction as to inflict the corporal Puniſhment aboveſaid.

Churches ſituated in a Corporation, may by the Conſent of the Mayor, Juſtices, &c. or the major Part within the Pariſh, and the Patron, be united by the Biſhop of the Dioceſe. 17 *Car.* 2. *c.* 3. How Churches in Corporations may be united.

Pariſhioners of the Church united, makes the Pariſhioners Contributors to the Repair and Ornaments of the Church to which the Union was made.

A Juſtice of Peace cannot impoſe a Tax for the Repair of a Church. 1 *Mod. Rep.* 194.

By Statute 1 *Jac.* 2. the Preacher of St. *James's* Church, *Weſtminſter*, is to have 100 *l. per Ann.* to be paid Quarterly by the Church-wardens; and in Default, the two next Juſtices of Peace may give Relief, and cauſe the Church-wardens to be impriſon'd 'till Payment. The Proviſion for the Parſon of St. James's Church.

One was indicted upon the Statute of 5 *Edw.* 6. for Striking in St. *Paul's* Church-Yard, and it was mov'd, that it being the Church-Yard of a Cathedral Church, was not within the Statute; but held by the Court, that it is within the Statute.

C. was indicted for Striking in a Church-yard, but was diſcharged, becauſe it was *apud Generalem Seſſionem Pacis apud* Blandford; and was not *in Com. pred.* tho' the County was in the Margin. *Cr. Eliz.* 606. *Child's* Caſe.

One was indicted for drawing his Dagger in the Church, againſt *J. S.* without ſaying that he drew it with Intent to ſtrike *J. S.* for which Cauſe it was holden to be void. 2 *Leon.* 188. *Perchal's* Caſe. *Cr. Car.* 464. *Cholmley's* Caſe. It muſt be drawn with an Intent to ſtrike, or elſe it is not an Offence within the Statute.

To keep Fair or Market in the Church-yard, fineable. *Lamb.* 419.

Conviction of any upon the Statute of 5 *Edw.* 6. *c.* 4. may be by the Juſtices of Peace at their Quarter-Seſſions, by Verdict, two Witneſſes, or Confeſſion; and Execution of the Puniſhment upon the ſame Statute, to be awarded by the Juſtices of the Peace before whom the Conviction. Where Conviction on Stat. of 5 Edw. 6. may be.

Coſts ſhall be recover'd in the Spiritual Court, for Brawling in the Church-yard, *pro expenſis litium.* 2 *Cr.* 462.

For coming to Church, *vide Stat.* 1 *Eliz. cap.* 2. 23 *Eliz. cap.* 6. 29 *Eliz. cap.* 6. 35 *Eliz. cap.* 1. 3 *Jac.* 1. *cap.* 4. 13 & 14 *Car.* 2. *cap.* 4.

Every Perſon, having no lawful Excuſe, ſhall reſort to ſome Place where *Common Prayer* is uſed on *Sundays*,

1 Eliz. *Sundays*, and other Holidays, on Forfeiture of 1 *s.* for every Offence, for the Uſe of the Poor, to be levied by Church-wardens by Diſtreſs, *&c.* by Warrant from one Juſtice. Perſons above 16 Years old, not repairing to ſome Church or Chapel, *&c.* where

23 Eliz. c. 4. *Common Prayer* is uſed, for the Space of a Month, forfeit 20 *l.* (which the King may refuſe, and take the Thirds of all his Lands and Leaſes) for every Month; and if forbearing for the Space of twelve Months, ſhall over and above the aforeſaid Forfeitures, after Certificate thereof in Writing made into the Court of *K. B.* by a Juſtice, or the Ordinary, be bound with two Sureties in 200 *l.* for Good Behaviour; and ſo continue till Perſon bound do conform and come to Church. Perſon keeping a School-maſter, that does not repair to Church, *&c.* (not being allowed by Biſhop or Ordinary) forfeits 10 *l.* a Month. Penalties to Queen, Poor, and Informer. By 3 *Jac.* 1. School-maſter is diſabled to teach for ever afterwards, and is to be impriſon'd for a Year. Not being able to pay within three Months, Impriſonment 'till paid, or conform himſelf.

Note, By the Words of the Acts, it ſeems neceſſary to preſent Offences at Quarter-Seſſions.

Note; Making Submiſſion in open Aſſizes, or Seſſions, ſhall be diſcharged of all Pains and Forfeitures incurr'd by this Act (except Treaſon, and Miſpriſion of Treaſon.) *Proviſo* for Perſons having Divine Service in their own Houſes, who do not refuſe to come to Church, and ſhall be preſent there at leaſt four Times in a Year.

35 Eliz. c. 1. Perſons above Sixteen, convicted of being abſent from Church for a Month, without lawful Cauſe, or perſuading others to impugn the Queen's Authority, in Cauſes Eccleſiaſtical, or ſhall frequent Conventicles; every ſuch Perſon being lawfully convicted, ſhall be committed to Priſon without Bail, *&c.* 'till they ſhall conform, *&c.* But if not in three Months, ſhall abjure the Realm in open Seſſions, or Aſſizes, being thereunto required by Biſhop, or Juſtice. Felony without Clergy, refuſing to abjure.

Note; Theſe Acts extend not now to *Proteſtant Diſſenters*, qualify'd by Stat. 1 *W. & M. cap.* 18.

14 Car. 2. Where a Miniſter, who hath a Benefice with Cure, and is Reſident upon it, and hath a Curate under him, doth not once a Month himſelf read the *Common Prayer*, and adminiſter the Sacraments, and other Rites of the Church, he forfeits 5 *l.* to be levied by Warrant of two Juſtices. And by this Statute, the Sign of the Croſs is to be uſed in Baptiſm, and Kneeling at the

the Lord's Supper, and at the Prayers, and Standing up at the Creed, and ſome other Ceremonies, are to be uſed by Miniſter and People; and for not doing hereof, a Man may be indicted, but not before the Juſtices of Peace.

Where any one is aſſaulted, or beaten in a Church, it is not lawful to return, or give back any Blows in his own Defence, as he may do in another Place.

No Perſon having Office, Civil or Military, or other Employment whatſoever, ſhall, during their Employment, or Office, reſort to any Conventicle for Exerciſe of Religion in other Manner than according to the *Liturgy* of the Church of *England*, where ten Perſons are aſſembled, over and above thoſe of the Houſhold, on Penalty of 40 *l.* to be recovered by who will ſue for the ſame. Conforming to Church of *England* for a Year, and receiving the Sacrament three Times in that Year, without being preſent at any Conventicle, Qualification for an Office, *&c.* But muſt at the next *Term*, after Admiſſion into any Office in ſome Court at *Weſtminſter*, make Oath in Writing, or at Quarter Seſſions for the County where the Perſon lives, of ſuch Conformity as aforeſaid. Oath to be recorded. 10 Ann. c. 2.

No Conviction upon this Act, unleſs within ten Days, by Oath of two Witneſſes before one Juſtice; and Proſecution in three Months, *&c.* Two Juſtices may give the Oaths for Qualification.

So much of this Act, and the *Schiſm* Act, as relates to the Qualification of *Proteſtant Diſſenters*, is repeal'd by 5 *Geo.* 1. *cap.* 4.

How Church-wardens are to be choſen.

Church-wardens are very ancient Officers, and by the Common Law are a Corporation to take Care of the Goods of the Church, the Property whereof is in them for the Uſe of the Pariſhioners.

Anno 1604.

They are to be choſen by the Canon *Jac.* 1. by the joint Conſent of the Miniſter and Pariſhioners; and if they diſagree, then the Miniſter is to chuſe one, and the Pariſh another, every Year in the *Eaſter* Week, unleſs there is a Cuſtom to the contrary, which muſt be obſerved. 2 *Roll's Abridg.* 287.

Vent. 2660. Palm. 50.

When he is choſe by Virtue of any Cuſtom, tho' againſt the Canon, yet if the Arch-Deacon refuſes to ſwear him, a *Mandamus* will lye to compel him to it. And if the Arch-Deacon ſhould refuſe one who is choſen, and appoint another againſt the Conſent of the Pariſh, *B. R.* will grant a ſpecial Writ to the Biſhop to ſwear him, *vel cauſam ſignificare quare non.*

If the *Mandamus* be to ſwear them, ſetting forth that they were choſen generally, then a Return generally that they were not choſen, is good; but if it ſets forth, that they were choſen *debito modo*, there to Return generally that they were not choſen is ill; for it muſt ſet forth ſpecially, that they were not choſen *debito modo*.

Mandamus to an Arch-Deacon to ſwear a Church-warden, was return'd that he was *pauper & ſervus minus habilis*; and thereupon a preremptory *Mandamus* was awarded; for a Church warden is a temporal Officer, intruſted with the Pariſh Goods, and Pariſhioners may chuſe and put in Truſt whom they think fit; for 'tis at their Peril. *H.* 8. *W.* 3.

An Attorney can't be choſen Church-warden.

An Attorney cannot be made a Church warden; and if he is ſued in the Spiritual Court, being choſen to that Office, he may have a Prohibition. 2 *Roll's Abridgment* 272.

Church-warden's Duty.

He is to ſee that the Pariſhioners come to Church every Sunday and Holy Day, and to preſent the Names of ſuch who are abſent to the Ordinary, or to levy 12 *d.* for every Offence, *per Stat.* 5 & 6 *Ed.* 6. *cap.* 4. & 1 *Eliz. c.* 1.

If he find any in an Ale-houſe, &c. the Perſon is to forfeit 3 *s.* 4 *d.* and the Maſter of the Houſe 10 *s.* 1 *Jac.* 1. *c.* 5.

Church-wardens are a Corporation for Moveables of the Pariſh.

They are a Corporation only as to Moveables, *viz.* to take Goods, but not Lands, for the uſe of the Church, except in *London* by the Cuſtom; for they cannot preſcribe by the Name of Church-wardens, to have Lands, &c. neither can they have any Action at Common Law to recover Goods of which they were never poſſeſs'd; but they may recover ſuch Goods by a Bill in Equity. But if once they had Poſſeſſion, then they may have an Action of Treſpaſs, &c. and recover Damages to the Uſe of the Pariſh, if ſuch Goods are taken away, or abuſed; and they may have an Appeal of Robbery if Stol'n; but they can't ſell ſuch Goods, or diſpoſe of them, without the Aſſent of the Pariſh; if they do, the Pariſhioners may chooſe new Officers, who may bring an Action of Account againſt them. 3 *Co. Hadman's* Caſe.

But not for Freehold.

If any thing belonging to the Freehold is broken, or cut down, or the Walls, Windows, Doors or Trees in the Church yard, &c. the Parſon or Vicar, and not the Church-wardens, ſhall have an Action.

But the Church-wardens may maintain an Action for Defacing a Monument in the Church.

And

And ſo may the Heir by Deſcent have the like Action againſt any one, who beats down or Defaces Coats of Arms or Monuments, in the Church or Church-yard.

In an Action of Account brought by Church-wardens againſt their Predeceſſors, they muſt declare, *Quod reddant eis computum de bonis Parochianorum*, and not *de bonis Eccleſiæ*. 1 Vent. 89.

In an Action they muſt declare de bonis Parochianorum, not de bonis Eccleſiæ.

If the Miniſter is diſturbed, the Puniſhment is three Months Impriſonment without Bail. *per 6 Ed. 6. c. 4.*

One making Diſturbance in Church, Chapel, or Congregation permitted by the Statute of 1 *W. & M.* or miſuſing the Teacher, muſt find two Sureties to be bound in Recogniſance in 50 *l.* and for want thereof may be committed 'till next Quarter-Seſſions, and upon Conviction there forfeits 20 *l.*

Proof by two Witneſſes before a Juſtice of Peace.

The Clergy are excuſed from ſerving in any Perſonal Office though they have Lands, whereby Lay Perſons are obliged, and they are not obliged to ſerve in the Wars.

Thoſe who arreſt a Miniſter going to, or returning from Church, may be puniſhed by Indictment, or bound to the good Behaviour. The Offence is the ſame if a Lay-man be arreſted.

Church-wardens may apprehend thoſe who diſturb the Miniſter, *&c.* and bring them before a Juſtice of Peace.

They may execute Warrants, and Levy the Penalty on thoſe who prophane the Lord's Day, or who curſe and ſwear.

They are to joyn with the Conſtables in making Rates for Relief of the Poor, *&c.* and in chooſing Surveyors of the Highways, and appointing Days to Work.

At the End of every Year they muſt account, and deliver what remains in their Hands to the New Church-wardens, by a Writing indented; if they Refuſe, they may be preſented at the next Viſitation, or the new Officers may have an Action againſt them.

At the end of every Year they muſt account.

Upon a Motion for a *Mandamus* to the old Church-wardens of the Pariſh of *C.* to deliver the Pariſh-books to the new Church-wardens, *&c.* It was inſiſted on by the other Side, that the old Church-wardens had a Right to keep the Pariſh-books: So the *Mandamus* was denied; for a Conteſt between Pariſh Officers, which

of them hath a Right to keep thoſe Books, ought to be tried at Law upon a feigned Iſſue. *The King* ver. *Street* and *Stroud*. *Mich.* 9. *G.* 1.

After he has fully accounted, if he be cited in the Eccleſiaſtical Court, and excommunicated, an Action on the Caſe lies againſt him at whoſe Proſecution he was cited.

Churches, but not Pariſhes, by the Concurrence of the Ordinary, Patron and Parſon, might be united by the Common Law, and ſuch Union was of Spiritual Cogniſance 'till the Statute of 37 *Hen.* 8. *c.* 21. and then the Temporal Courts had Juriſdiction: But the Tithes and *Modus* continue after the Union.

Ordinary properly hath the Diſpoſal of the Seats in Churches.

The Ordinary hath properly the Diſpoſal of Seats in Churches, and may place or diſplace whom he thinks fit; but where Cuſtom, or Preſcription interpoſes, there his Power ceaſes, and the Temporal Courts give Remedy in Caſes of Diſturbance, *&c.*

But the Ordinary's barely not acting for many Years (becauſe perhaps there was no Occaſion) can never veſt a Right in the Church-wardens, who are only a Corporation capable of Goods.

For a poſitive Preſcription ſeems neceſſary; and therefore a Man may have a Seat in a Church appendant to his Houſe, and may preſcribe, that he, and all thoſe whoſe Eſtate he hath, *&c.* uſually ſat there, and repaired the Seat, and in ſuch a Caſe a Prohibition lieth; but one can't preſcribe to a Seat in the Body of the Church generally, without ſhewing that he, and all thoſe, *&c.* have Time out of Mind repair'd it. 2 *Roll's Abridg.* 288.

The Caſe is the ſame in an Iſle of a Church, for ſuch a Preſcription to repair the Iſle, and to ſit there with his Family, makes the Iſle peculiar to his Houſe, and he cannot be diſplaced by any Body; but Sitting and Burying there, without Repairing, doth not make it ſo. 1 *Cr.* 367.

But the Ordinary hath no Power over Seats in private Chapels, belonging to particular Families. 2 *Roll's Abridg.* 288.

Pariſh Taxes are made by Church Wardens, &c.

Taxes for Repairs are made by the Church-wardens, and greater Part of the Pariſhioners preſent, after a general Notice given for that Purpoſe, and not by the Church-wardens alone. 5 *Rep.* 67. 1 *Vent.* 367.

The Charge is in reſpect of the Lands, and therefore, if the Owner lives in another Pariſh, he ſhall be rated

rated to repair in the Pariſh where the Lands lye, unleſs he let it by Leaſe, and then he ſhall be charged in reſpect of the Rent reſerved thereon.

And in ſuch Caſe, if the Leſſee is ſued for Repairs (as he may) the Landlord ſhall contribute in Proportion to the Rent reſerved, and the Tenant for ſo much as the Land is worth above the Rent 2 *Roll. Rep.* 270.

A Man had a Leaſe of a Stall in a Market-Town, where he ſold Goods once a Week, but lived in another Pariſh, he ſhall not be charged in the Market-Town. 2 *Roll.* 228.

A Perſon living in one Pariſh, and occupying Lands in another, ſhall not be charged for the Ornaments of the Church where the Lands are, becauſe the Inhabitants only are to be charged for Ornaments in regard of their perſonal Eſtates. 2 *Roll's Abridg.* 291.

Majority of Pariſhioners bind the reſt.

The Majority of the Pariſhioners, at a Meeting, may make a Rate to oblige the whole Pariſh for altering the Place of the Communion Table, and carrying it into the Chancel; and for raiſing the Ground to go up Steps to it; for they are compellable to put Things in decent Order, and there is no Rule for Decency, but the Judgment of the Majority of the Pariſh.

But the Majority ſhall not bind the reſt in repairing and adorning the Chancel, becauſe that is the Freehold of the Parſon.

One living in one Pariſh, and occupying Lands in another, may be taxed towards the new Caſting the Bells of the Pariſh where his Lands are.

If thoſe of a Chapelry have always buried and chriſtned within themſelves, they may preſcribe to be exempt from repairing the Mother-Church; for in ſuch Caſe, the Chapel ſhall be intended to be coeval with the Church, and not built ſince for their Eaſe.

If there is a Chapel of Eaſe, which one Part of the Pariſh hath always uſed to repair, and to hear Divine Service there, but bury at another Church, they muſt contribute to repair that Church.

If the Pariſh is unequally rated, thoſe who are grieved muſt plead it in the Spiritual Court, being ſued there; but they cannot have a Prohibition. 2 *Roll's Abridg.* 291.

Church-wardens uſually make their Preſentments twice a Year, whereof one Time is to be a Week before *Eaſter*, when the old Church-wardens are to leave

their Office, and the new Ones are to be ſworn, which they are not to be till the other have given in their Preſentments; and if they refuſe, the Parſon or Vicar may Preſent, *&c.* They cannot be compell'd to Preſent oftner than once in a Year, except at the Viſitation of the Biſhop; and the Regiſter is to receive but 40 *s.* for every Preſentment.

An Oath was tendred by the Spiritual Court to a Church-warden, to Preſent according to the Articles of the Biſhop, in which were many Special Things; as to preſent filthy Talkers, *&c.* and a Prohibition was granted. 1 *Vent.* 114.

But if the Oath had been to Preſent according to the Eccleſiaſtical Laws, and the Articles offer'd only by Way of Direction, in ſuch Caſe a Prohibition ought not to go. 1 *Vent.* 127. *Hard.* 364.

The Biſhop of the Dioceſe cannot appoint Commiſſioners to rate a Pariſh for Repairs of their Church. 2 *Mod.* 8. *Curtis*'s Caſe.

The Spiritual Court may, by their Eccleſiaſtical Cenſure, compel the Pariſh to repair the Church; but they can't appoint what Sums are to be paid for that Purpoſe, becauſe the Church-wardens, by the Conſent of the Pariſh, are to ſettle that.

If it be neceſſary to pull a Church quite down, that is ſo ruinous it cannot be otherwiſe repair'd, in ſuch Caſe, upon a general Warning, or Notice given to the Pariſhioners, or from Houſe to Houſe, the Major Part of them then preſent, and meeting according to ſuch Notice, may make a Rate for pulling down the Church, and building it upon the old Foundation, and for making Vaults where they are neceſſary; and if more be raiſed than is neceſſary, the Church-wardens are accountable for the Overplus, they not being able to compute to a Shilling. If any of the Pariſhioners refuſe to pay their Proportion, they may be libell'd againſt in the Spiritual Court; and if the Libel alledge the Rate to be *pro reparatione Eccleſiæ* generally (tho' in Strictneſs *Eccleſia* contains both the Body and Chancel of the Church) yet by the Opinion both of the Court of *Common Pleas*, and of the *Exchequer*, it ſhall be intended, that the Rate was only for the Body of the Church.

If any Pariſhioner refuſe to pay his Proportion, he may be ſued in the Court.

The Biſhop, much leſs his Chancellor, can't ſet a Rate upon a Pariſh, but it muſt be done by the Pariſhioners themſelves.

Church-wardens may make Rates themſelves, if the Pariſhioners are ſummon'd, and refuſe to meet.

Church-

Church-wardens may pull off a Man's Hat, who ſits cover'd at the Time of Divine Service; for tho' it is an Offence puniſhable by Preſentment in the Eccleſiaſtical Court; yet they ought not to ſuffer ſuch Indecency in the mean Time. 1 *Vent.* 367. *Mich.* 18 *Car.* 2. 1 *Lev.* 197. *Jones Rep.* 89. 1 *Mod.* 236. 1 *Lev.* 146.

Forfeiture of a Parſon marrying without a Licenſe, &c.

If a Parſon marry any Perſon in any Church, or other Place, without publiſhing the *Banes* according to Law, or without a Licenſe for the ſaid Marriage firſt had, he ſhall forfeit 100 *l.* and the Man ſo married 10 *l.* and Pariſh-Clerk, or Sexton aſſiſting, or promoting ſuch Marriage, knowing it to be ſo, ſhall forfeit 5 *l.* to be recover'd by Action of Debt, Information, *&c.* 7 & 8 *W.* 3. *c.* 3.

Juſtices, *&c.* may enter Meeting-Houſes, and ſeize Perſons aſſembled (being above five in Number) who are liable to a Forfeiture of 5 *s.* for the firſt Offence, and 10 *s.* for the ſecond. And Perſons ſuffering Conventicles to be held in their Houſes, to forfeit 20 *l.* by Stat. 22 *Car.* 2. But Proteſtant Diſſenters are exempted from Penalties. 1 *W.* & *M.*

Qualifications of School-Maſters, &c. by 12 Ann.

By Stat. 12 *Ann.* if any Perſon ſhall keep any publick or private School, or Seminary, or teach any Youth, as Tutor or Schoolmaſter, before he ſhall have ſubſcribed the Declaration of 14 *Car.* 2. *viz.* That he will conform to the *Liturgy* of the Church of *England*, as by Law eſtabliſh'd, and ſhall have obtain'd a Licenſe from the Arch-Biſhop, or Biſhop of the Dioceſe, and thereof ſhall be lawfully convicted, in any of the Courts at *Weſtminſter*, or at the Aſſizes, he ſhall be committed to the common Gaol for three Months.

And ſuch Perſon ſo keeping a School, *&c.* ſhall receive the Sacrament according to the Church of *England*, and take the Oaths of Allegiance and Supremacy, and Abjuration, and ſubſcribe the Declaration againſt Tranſubſtantiation of 25 *Car.* 2. before the Arch-Biſhop, or Biſhop ſhall grant him a Licenſe.

Such Perſon reſorting to a Conventicle, or Meeting, after licens'd, or teaching any other *Catechiſm* than the *Catechiſm* in the Book of *Common Prayer*, the Licenſe ſhall be void, and he ſhall be liable to the Penalties of this Act.

This Act not to extend to any Tutor, *&c.* in any College, or Hall, within either of the Univerſities, nor to any Tutor in Noblemens Families, qualifying himſelf according to this Act, except only in taking

a Licenſe from the Biſhop; nor to any Tutor, or Schoolmaſter, teaching Youth in Reading, Writing, Arithmetick, or Mathematical Learning in the *Engliſh* Tongue.

But repeal'd by 5 Geo.

The preceding Act is repeal'd, and alſo Statute 10 *Annæ*, for preſerving the *Proteſtant* Religion, by better ſecuring the Church of *England*, by 5 *Geo. c.* 4.

Church-wardens are to ſuffer no Man to preach within their Churches, or Chapels, without producing their Licenſe; and to take care that all Perſons excommunicated, be kept out of the Church. *Can.* 50. 85. and to ſee that Peace be duly kept in the Congregation.

They are to keep the Keys of the Belfrey, and take care that the Bells be not rung without good Cauſe, to be allow'd of by the Miniſter and themſelves. *Can.* 88.

The Parſon impropriate has a Right to the chief Seat in the Chancel, becauſe he ought to repair it; but by Preſcription another Pariſhioner may have it. *Noy's Rep. Gilſon* ver. *Wright & al.*

If a Man erect a Pew in a Church, or hang up a Bell in a Steeple, they thereby become Church-Goods (though they are not expreſly given to the Church) and he may not afterwards remove them; if he does, the Church-wardens may ſue him. *Stat.* 10 *Hen.* 4.

What are Church Reparations.

Church Reparations extend to Church-Yard Walls, the Walls of the Church and Steeple, the Floor, the Pulpit, and the Pews, the Windows, Iron bars, and Glaſs, the Roof Timber with Laths, Nails, &c. the Covering of Lead, Tiles, &c. the Doors with Locks and Keys, Stairs, Floors, Bells, Wheels, and Ropes in the Steeple.

To what Pariſhioners are chargeable.

Pariſhioners are chargeable for Repairs of Ornaments of the Church, *viz.* the Communion-Table and Coverings of the Communion Cups, the Bread and Wine, Candles, the Bible, and other Books appointed to be kept in Churches; the Surplice, Pulpit-Cloth, and Cuſhion, are accounted Church-Ornaments. The Sexton's Wages, Waſhing the Communion Cloaths, Candles, and Monies diſburſed by Church-wardens, about the Pariſh Buſineſs, are to be rais'd by a Rate or Tax upon the Pariſhioners, not on Lands. 2 *Roll.* 291.

Church wardens to provide Stop-Blocks.

Church-wardens of every Pariſh within the Bills of Mortality, ſhall at the Charge of their reſpective Pariſhes, fix Stop-Blocks, and Fire-cocks, upon the

Pipes belonging to the Water-works; and make a Mark on the Front of any Houſe over-againſt them, to find them, where an Inſtrument is to be kept to open the Plug when any Fire happens.

And in each Pariſh ſhall be kept a large Engine, and a Hand-Engine, and a leather Pipe and Socket of the ſame Size as the Plug, or Fire-cock, under the Penalty of 10 *l.* to be levied by Warrant of two Juſtices, by Diſtreſs and Sale of the Goods of the Church-wardens; one Moiety to go to the Informer, and the other to the Poor.

The firſt Perſon who brings in a large Engine with a Socket, *&c.* to a Fire, ſhall be paid 30 *s.* the ſecond 20 *s.* the third 10 *s.* And the Turn-cock whoſe Water ſhall firſt come into the main Pipe, ſhall have 10 *s.* all paid by the Church-wardens, who may raiſe Money for the Maintenance of the Engine, Stop-Blocks, *&c.* as they do for the Maintenance of the Poor. *Stat.* 6 *&* *Stat.* 7 *Ann.* The Rewards for bringing in Engines.

Two Juſtices (*Quorum unus*) may make their Warrant both to the preſent, and ſubſequent Church-wardens, to levy all Sums and Arrears of every one who ſhall refuſe to contribute according to Aſſeſſment, and in Default of Diſtreſs, commit them to the Gaol till Payment be made. *Dalt.* 155.

Church-wardens are not to be cited by the Eccleſiaſtical Court any further than that they may return the ſame Day. 12 *Co.* 112.

Church-wardens ſhall not have double Coſts, according to *Stat.* 7. *Ja.* 1. Preſenting for Incontinency, it being a Spiritual Matter. 1 *Cr.* 467. So in caſe of an Action of the Caſe againſt them, for ſuch falſe Preſentments, Verdict being given for them. 1 *Cr.* 286.

Neither Church-wardens (nor the Ordinary) can give Licenſe to bury in the Church, nor any but the Parſon, who has the Freehold in him. None but the Parſon to give Licenſe to bury in the Church.

If the Church-wardens ſue in the Eccleſiaſtical Court for a Church-Way, which they claim to belong to all the Pariſhioners by Preſcription, a Prohibition lies; for this is not of Eccleſiaſtical Cognizance. 2 *Rolls* 289. P. 16 *Ja.* 1. *B. R.* between the Inhabitants of *Bythorn* and *Bow.*

If the Church-wardens ſue one in the Eccleſiaſtical Court, for that he, and all thoſe whoſe Eſtate he hath in ſuch an Houſe, *&c.* at the Perambulation or Proceſſion of the Pariſhioners of the Pariſh, did uſe

to

to provide a Refreſhment for them with Bread, Cakes, Cheeſe and Ale, &c. and ſuffer 'em to reſt there, in this Caſe a Prohibition will be granted; for that they claim it in the nature of a *Corrody*. *Mich.* 13 *Jac.* 1. *B. R.* The Church wardens of *Uffington*'s Caſe in *Berkſhire*. *Hill.* 15 *Car.* 1. *B. R.* 2 *Roll.* 287. *Moore*, *Reynold*'s Caſe.

Church-wardens refuſing to receive Poor removed by 2 Juſtices, forfeit 5 *l.*

Church-wardens and Overſeers refuſing to receive any Perſon removed by two Juſtices, and to provide for them, forfeit 5 *l.* on Proof of two Witneſſes before one Juſtice; on Refuſal, Diſtreſs, &c. for want, forty Days Impriſonment.

In *London* the Pariſhioners repair both the Church and Chancel. 1 *Salk.* 164. The Spiritual Court may compel the Pariſhioners to repair the Church, and excommunicate them till it be repair'd; but the Eccleſiaſtical cannot appoint in what Sum, &c. 1 *Mod. Rep.* 194. 2 *Mod.* 8.

If a Pariſh is encreas'd, the Church-wardens, and greater Part of the Pariſh, may raiſe a Tax for the neceſſary Enlarging of the Church, as well as the Repairing thereof; and if the Church-wardens erect or add any thing new in the Church, as a new Gallery, &c. where there was none before, they muſt have the Conſent of the major Part of the Pariſh, and alſo the Licenſe of the Ordinary. 1 *Mod.* 237.

Tho' Lands ought not generally to be taxed for Church Ornaments, yet by Cuſtom both Lands and Houſes may be liable to it. 2 *Inſt.* 489. *Cro. El.* 843.

By Cuſtom in *London*, the Church-wardens have the placing the Pariſhioners in the Seats of the Body of the Church, appointing Pew-keepers, &c.

If the Church-wardens Receipts fall ſhort of their Diſburſements, the ſucceeding Church-wardens muſt pay them the Ballance, and place it to their Account; and if they have not gathered their Rates, they may preſent the Perſons making Default in their laſt Preſentment, or paſs over their Arrears to their Succeſſors, who ſhall recover the ſame for them. 1 *Roll. Abr.* 121.

The Church-wardens have the Care of the Benefice upon any Vacancy.

The Church-wardens have the Care of the Benefice upon any Vacancy, when they are to apply to the Chancellor of the Dioceſe for a Sequeſtration, which being granted, they are to manage all the Profits and Expences of the Benefice for the Succeeding Parſon; Plow and Sow the Glebes, gather in Tithes, thraſh out and ſell Corn, repair Houſes, &c. And they muſt

ſee that the Church be duly ſerved by a Curate approv'd by the Biſhop, whom they are to pay out of the Profits of the Benefice. 2 *Co. Inſt.* 89.

The Articles commonly exhibited to Church-wardens to make their Preſentments, may be reduced thus.

Viz. To Things which concern { 1. The Church. 2. The Parſon. 3. The Pariſhioners.

1. Thoſe Things which concern the Church; as,

Alms, whether a Box for that Purpoſe.
Aſſeſſments, whether made for Repairs.
Bells and Bell-ropes, if in Repair.
Bibles, whether in Folio.
Canons, whether a Book thereof.
Lord's Prayer in fair Letters.
Marriage, a Table of Degrees.
Monuments ſafely kept.
Church-yard well fenced.
Commandments in fair Letters.
Common Prayer-Book.
Communion-Table.
Carpet.
Cheſt with three Locks.
Church and Chancel in Repair.
Creed in fair Letters.
Cups, and Covers for Bread, *&c.*
Cuſhion for Pulpit.
Deſk for Reader.
Flagon.
Font.
Grave-ſtones well kept.
King's Arms ſet up.
Regiſt. Book in Parchment.
Surplice, whether any.
Table-Cloth.
Tombs well kept.

2. Thoſe Things which concern the Parſon.

Articles 39, if read twice a Year.
Baptizing with Godfathers.
Canons, if read once a Year.
Catechiſing Children.
Common Prayer, if read, *&c.*
Dead, if he bury them.
Doctrine, if he preach good.
Gown, if he preach in it.
Homilies, if read, or he preach.
January 30th, if obſerv'd.
May 29th, if obſerv'd.
Marrying privately.
November 5th, if obſerv'd.
Preaching every *Sunday*.
Peace-maker.
Perambulation.
Sacrament, if celebrated.
Sedition, if vented.
Sick, if viſited.
Sober Life.
Surplice, if wear it.

3. Thoſe

3. Thoſe Things which concern the Pariſhioners.

Adulterers, if any.
Alms-houſes, if abuſed.
Ale-houſes, &c. in Divine Service.
Anſwering according to Rubrick.
Baptiſm neglected by Parents.
Blaſphemers.
Church, reſorting to it.
Dead, if brought to be buried.
Drunkards, if any.
Fornicators, if any.
Legacies, if any given to pious Uſes.
Marrying within prohibited Degrees.
Marrying without Banns, Licenſe, or at unlawful Hours.
Sacraments receiv'd three Times in a Year, of all above ſixteen, whereof *Eaſter* to be one Time.
School, if abuſed.
Seats, if Pariſhioners are placed in them without Contention.
Standing up.
Sundays, working therein.
Swearers, if any.
Women, if come to be churched.

Pleas of unequal Rates are only triable in the Spiritual Court. 2 *Roll. Abr.* 291.

An Indictment for ſtriking with a Weapon in a Church-Yard.

Cro. El. 231. 2 Leon. 188. Noy 171, 172. St. 5 Ed. 6.

Eſſex, ſſ. JURR', &c. quod J. O. de, &c. nono decimo die Decemb. Anno Regni, &c. vi & armis apud H. in Com̃ pr̃ed in Cemeterio Eccleſie Parochialis de A. pr̃ed malitioſe pugionem ſuum extraxit in quendam R. N. de H. pr̃ed Yeoman, ac cum pr̃ed pugione pr̃efat' R. N. adtunc & ibidem in Cemeterio pr̃ed percuſſit contra pacem dict' Dom̃ Reg̃ ac contra formam Statut. in hujuſmodi caſu edit. & pr̃ovis.

A Warrant againſt one for not coming to Church.

Eſſex, ſſ. WHereas Oath hath been made before me, that J. O. of, &c. did not upon the Lord's Day laſt paſt, reſort to any Church, Chapel, or other uſual Place appointed for Common Prayers, and there hear Divine Service according to the Form of the Statute in that Caſe

Caſe made and provided: Theſe are therefore to require you, &c. *to bring the ſaid* J. O. *before me to anſwer the Premiſſes.* Given, &c.

A Warrant to levy the Forfeiture for not coming to Church.

Eſſex, ſſ. *WHereas it hath been duly proved before me, that* C. D. *of* &c. *in the County aforeſaid, hath not for theſe four Sundays laſt paſt, frequented, or been at any Church, or other Place ordained for the Reading of the Common Prayer, and for Divine Service, but hath irreligiouſly abſented himſelf from the ſame, contrary to an Act of Parliament in that Caſe made; And the ſaid* C. D. *having appeared before me, but not made a ſuffi ient Excuſe for his ſaid Defaults: Theſe are therefore to require you to levy by Diſtreſs and Sale of the Goods of the ſaid* C. D. *the Sum of* 4 s. *by him forfeited by the Offences aforeſaid, and that you do apply the ſame to and for the Uſe of the Poor of the ſaid Pariſh of,* &c. *rendring the Overplus of the Money raiſed by Sale of the ſaid Diſtreſs, to the ſaid* C. D. *Hereof fail not.* Given, &c.

A Warrant to Diſtrain for a Church-Tax.

Eſſex, ſſ. *WHereas Complaint hath been made unto us, by* A. B. *of,* &c. *Church warden of the ſaid Pariſh, that* C. D. E. F. *of,* &c. *aforeſaid, have refuſed, or neglected to pay the Sums of Money aſſeſſed upon them, for and towards the Reparation of the Pariſh-Church of,* &c. *aforeſaid,* viz. *The ſaid* C. D. *the Sum of* 10 s. *and the ſaid* E. F. *the Sum of* 5 s. *though the ſaid Aſſeſſment was legally made: Theſe are therefore in His Majeſty's Name, to command you, that you, or any of you, do levy the ſaid ſeveral and reſpective Sums of* 10 s. *and* 5 s. *by Diſtreſs and Sale of the ſeveral and reſpective Goods of the ſaid* C. D. *and* E. F. *rendring to them the Overplus, if any be, after the ſaid ſeveral Sums, and the Charges of the Diſtreſs deducted, and in caſe there be no Goods, whereof a ſufficient Diſtreſs may be taken, that then you do certify the ſame to us, that ſuch further Proceedings may be made, as to Juſtice appertains.* Given, &c.

A War-

A Warrant to apprehend a Perſon for making a Diſturbance in the Church, and abuſing the Miniſter.

Eſſex, ſſ. *WHereas* A. B. *of*, &c. *and* C. D. *of*, &c. *have made Oath before me, that they ſaw* E. F. *of your Pariſh, on Sunday the Day*, &c. *of this Inſtant*, &c. *go into the Pariſh Church of*, &c. *in the County aforeſaid, and there in Time of Divine Service make a great Noiſe and Diſturbance, and particularly calling* G. H. &c. *Raſcal, and other unbecoming Names, and bidding him get him gone out of the ſaid Church, as having no Buſineſs there, to the Interruption of Divine Service; And that the ſaid* E. F. *was guilty of indecent and irreverend Language to Mr.* J. L. *Rector of the ſaid Church, who was then and there diſcharging his Duty, and other Miſdemeanours, tending to the Breach of the Peace, and the Contempt of Religion: Theſe are therefore in His Majeſty's Name to command you to apprehend the ſaid* E. F. *if he be within your Pariſh, and to bring him before me, or ſome other Juſtice of Peace for this County, to anſwer what is objected againſt him, as aforeſaid; and that you do require the ſaid* E. F. *to bring with him two ſufficient Sureties, to enter into a Recognizance for his Appearance, at the next General Quarter-Seſſions, to be proſecuted according to Law.* Given, &c.

A Warrant to levy the Forfeiture for uſing a Trade on a Sunday.

Eſſex, ſſ. *WHereas it has been duly proved before us, that* A. B. &c. *hath of late, publickly uſed and exerciſed his Trade of* &c. *in*, &c. *by expoſing to Sale*, &c. *on Sundays, whereby he hath forfeited the Sum of* 5*s. to the Uſe of the Poor of the ſaid Pariſh of*, &c. *according to the Statute in that Caſe made: Theſe are therefore in His Majeſty's Name to command you to levy*, &c. ut ſupra. Given, &c.

By Stat. 9 *Ann. c.* 22. A Duty was granted on Coals imported in *London*, for building fifty new Churches in or near *London* and *Weſtminſter*, &c. And a like Duty for the Maintenance of the Miniſters, by 1 *G.* 1. *c.* 23.

Clergy.

WHAT Clergy is, with the Beginning and Uſe thereof, ſee *Hobart's Reports*, 288. *Seatle* and *Williams*'s Caſe. 11 *Co.* 29.

The Clergy have by Law ſeveral Privileges, which are not allowed the Laity, *viz.* Privileges of the Clergy.

They are not to ſerve in any Temporal Office, tho' they hold Lands, by reaſon whereof other Men ought to ſerve; and if they are choſen to any ſuch Office, there is a Writ in the Regiſter to diſcharge them.

They are not bound to ſerve in the Wars, neither are they to pay any Tolls or Pontage, for the Goods which they have of the Church.

Before the 20th *Ed.* 1. they paid no Tenths to the King, for their Eccleſiaſtical Livings, but to the *Pope*; but in that King's Reign, their Livings were valued all over *England*, and the Tenths paid to the King; and now by the Statute 26 *Hen.* 8. *c.* 3. they are given to the Crown for ever.

If a Man in Orders is a *Cognizee* in a Stat. his Body ſhall not be taken in Execution; and if he is *Clericus Beneficiatus*, a *Levari facias* ſhall not be brought againſt his Goods, but a Writ to the Biſhop, to levy the Debt *de bonis Eccleſiaſticis*.

All which Liberties, and many more, are confirmed by *Magna Charta*, *&c.*

As to the *Benefit of the Clergy*, it was introduced here by the *Canon* Law, exempting their Perſons from any Temporal Juriſdiction; and as its Original was by the Law of the Church, ſo it was for ſome Time allowed only to *Clerks* in Orders, or to thoſe who had vowed to enter into Orders; and the Reading was to ſhew that he was qualified, and was allow'd on purpoſe to ſave the Life of a Criminal, in certain Caſes, if he was a Man of Learning, as ſuch were accounted in thoſe Days. But afterwards the Reading, without a Vow to enter into Orders, was held good, and the Benefit is now equally extended to both Clergy and Laity. The Benefit of the Clergy, how introduced.

But tho' the Ordinary uſually tender'd the Book, the Court are the proper Judges of the Criminal's Reading; and therefore where the Ordinary anſwer'd *quod legit*, the Court judged otherwiſe, and fined the Ordinary, and hanged the Perſon. Court is Judge of the Reading.

Antiently

Antiently it might be claimed by the Party himſelf, either before or after Conviction, tho' never till the Offender was indicted; but in the Reign of *Hen.* 6. by the Advice of the Judges, it was not allow'd till after Conviction; and ſo the Law now ſtands.

At Common Law the Courts were not to tender it *ex Officio.* Nay, in the Reign of K. *Ja.* 2. in the Caſe of *Goring* and *Deering*, upon an Appeal, it was held that the Court might delay to call a Criminal to Judgment, after a Conviction for Manſlaughter, on purpoſe to make him liable to an Appeal.

Court ought ex Officio to call the Party to Judgment.

But this is ſince denied to be Law in the Caſe of *Armſtrong* and *Liſle*, 8 *W.* 3. and it was reſolved, that the Court ought *ex Officio* to call the Party to Judgment, on a Conviction of Manſlaughter, and to allow him the Benefit of Clergy, if he prays it; which is now a good Plea in Bar to an Appeal, even tho' he was not actually burned in the Hand. *Keyling's Reports* 94.

Offender not required to read now.

By a late Statute, the Offender is not required now to read, but he is to be puniſhed as a Clerk convict, without reading. 5 *Ann. c.* 6.

Antiently, an Offender might have his Clergy even for Murder, *toties quoties*; but this was reſtrained by Statute 4 *Hen.* 7. *c.* 13. *viz.* that he ſhould have it but once; and for the better Obſervance of that Law, it was then provided, that the Criminal ſhould be marked upon the Brawn of the Left Thumb, that he might be known again upon a ſecond Offence.

Burning in the Hand no Part of the Judgment, only a Mark ſet on the Offender.

This was the firſt Statute that was made about Burning in the Hand, which was not intended as any Part of the Judgment, but only a Mark ſet upon the Offender, that he might not have his Clergy a ſecond Time; and now, after he is burnt, he is by Statute 18 *Eliz. c.* 7. to be enlarged by the Court, *&c.* But if the Criminal is not burnt in the Hand after Conviction, his Credit is loſt, and he is incapable of being a Witneſs; for the Law is not ſatisfied till he is either burnt, *&c.* or pardon'd. 'Tis true, he may be bail'd, in order to get a Pardon, but till then, the Conviction is ſtill upon him: But after Burning, the Judge may detain him, if he thinks fit, till he finds Sureties for his Good Behaviour, or he may diſcharge him.

A Rule in Law to have Clergy, unleſs taken away by expreſs Words.

'Tis a Rule in Law, that where a Statute creates a new Felony, the Offender ſhall have his Clergy, unleſs 'tis expreſly taken away by that, or any other ſubſequent Act.

Now

Now the firſt Law which made a new Offence, and took away Clergy from the Offender, was the Statute of 7 *Hen.* 7. *c.* 1. which made it Felony for a Soldier to depart from his Colours without Licenſe; and before that King's Reign, there was no Law to take away Clergy, in Caſes of ſimple Felony.

'Tis further to be obſerved, that where-ever Clergy is taken away by a particular Statute, the Offence laid in the Indictment muſt be brought within that very Statute, otherwiſe the Offender ſhall have Clergy.

As if he is indicted upon the Statute of 8 *Eliz. c.* 4. for picking a Pocket privily, *&c.* The Words *clam & ſecrete* muſt be inſerted.

Clergy is taken away in the following Offences, *viz.*

Arms. { Imbezilling Arms, Ordnance, Munition, Victuals, or Stores of War, either for Land or Sea-Service, to the Value of 20 *s.* *per* 31 *Eliz. c.* 4. & 22 *Car.* 2. *c.* 3.

Bail, *&c.* { Acknowledging, or procuring to be acknowledg'd, any Fine, Recovery, Deed enrolled, Statute, Recognizance, Bail, Judgment, in the Name of another not conſenting, or privy. 21 *Ja.* 1. *c.* 26.

Bank-Bills, 8 & 9 *W.* 3. *c.* 19.

Breaking Booth, *&c.* { In Fair or Market, any Body being in it, 5 & 6 *Ed.* 6. *c.* 6.
In the Day-time, and taking to the Value of 5 *s.* 39 *Eliz. c.* 15.

Breaking into a Shop to deſtroy Woollen Goods in the Loom. 12 *G.* 1.

Baſtard-Child, Mother concealing the Birth. 21 *Ja.* *c.* 27.

One *Evans* went into a Chamber in the *Inner Temple*, through the Window, and took 40 *l.* and *Finch* was upon a Ladder on the Out-ſide of the Chamber at the ſame Time, and in View of the other: Now, tho' they were both Principals, yet ſince Clergy was taken away by Statute 29 *Eliz.* from ſuch as *enter and take away*, and ſince *Finch* did *not enter*, he had his Clergy. *Cr. Car.* 417.

Bills for Aſſurance of Ships. 6 *G.* 1. *c.* 18.
Buggery. — 5 *Eliz. c.* 7.
Burglary. — 23 *H.* 8. *c.* 1. *Vide* 5 *A. c.* 6.
Burning — Ships. 1 *Ann. c.* 9.

For burning Houſes, or Barns full of Corn, Clergy is taken away by the Statute of 23 *Hen.* 8. *cap.* 1. and for ſeveral other Offences therein mentioned.

Afterwards by the Statute 1 *Edw.* 6. *c.* 12. Clergy is taken away for the ſame Offences which are mention'd in the Statute of 23 *Hen.* 8. But Burning of *Dwelling-houſes* is omitted in this laſt Statute, which is, That in all other Caſes of Felony, except thoſe therein mention'd, Clergy ſhall be allowed; and becauſe Burning, &c. was not mention'd therein, it was the Opinion of Judge *Staundford*, That the Principal ſhould have his Clergy; and *Anno* 25 *Eliz.* he had it accordingly.

Challenge of Jurors. { Above twenty; or do not directly anſwer, if the Indictment be for ſuch an Offence for which Clergy is not to be allowed, if convicted by Indictment, or Confeſſion.

Conjuration. { Convicted thereof, or of Witchcraft, &c. to kill, conſume, or lame any Perſon; undertaking to tell where Goods loſt or ſtolen may be found; or to provoke any unlawful Love; or to deſtroy, or hurt Cattle, or Goods or Perſon: Firſt Offence, Impriſonment for a Year without Bail; only once in a Quarter of that Year, muſt ſtand ſix Hours in the Pillory, in ſome Market, &c. ſecond Offence is Felony without Clergy. 1 *Ja.* 1. *c.* 12.

Debentures. { Debentures made knowingly and fraudulently, or altering or counterfeiting them, adjudg'd Felony, and the Offender ſhall ſuffer Death. 5 *G.* 1. *c.* 14.

Egyptians. { Tranſported here, and ſtaying above a Month. 1 & 2 *Ph.* & *M. c.* 13.

Forging

Exchequer Bill. { Forging or Counterfeiting it, or any Endorſement thereon, or Tendering in Payment ſuch forg'd Bill, or demanding to have it changed for ready Money by the Bank, or any Receiver or Collector, knowing it to be forged, or with an Intent to defraud, on Conviction, is Felony without Benefit of Clergy. 7 & 8 *W.* 3. *c.* 31. 6 *G.* 1. *c.* 4.

Forgery. { Second Conviction. 5 *Eliz.* *c.* 14. and by 2 *Geo.* 2. on the firſt Conviction.

Horſe-ſtealing. { 1 *Edw.* 6. *c.* 12. 2 & 3 *Edw.* 6. *c.* 33. Theſe Statutes mention only the principal Horſe-ſtealer, and therefore the Acceſſary ſhall have Clergy. *Dyer* 99.

Lottery Orders. { 12 *Ann.* *c.* 2. 5 *G.* 1. *c.* 1.

Maiming. — Perſon maliciouſly, 22 & 23 *Car.* 2.

Maid. — Taken away having Lands, &c. 3 *H.* 7. *c.* 2.

Murder. — 23 *H.* 1. *c.* 1. 25 *H.* 8. 1 *Edw.* 6. *c.* 12.

Northumberland. { Notorious Thieves and Spoilers taken there, or in *Cumberland.* 18 *Car.* 2. *cap.* 3. 29 *Car.* 2. *cap.* 2.

Outlawry. { For an Offence not within the Benefit of Clergy, 1 *Ed.* 6. *c.* 12. 4 & 5 *P.* & *M.* *c.* 4. 8 *El.* 18 *El.* *c.* 7. 22 *Car.* 2. *c.* 5. 3 & 4 *W.* 3. *c.* 7. 4 *G.* 1. *c.* 12.

Pick-Pocket. { 8 *Eliz.* *c.* 4. Taking above 12 *d.* from the Perſon *clam* & *ſecrete*, for otherwiſe Clergy is to be allowed. *H. P. C.* 231.

Piracy. { Acceſſary before and after, to ſuffer as Principal. 10 & 12 *W.* 3. *c.* 7.

Poiſoning. — Of Malice prepenſe. 1 *Ed.* 6. *cap.* 12.

Popiſh Recuſants. { Thoſe who are appointed to abjure, and refuſe, or return again. 35 *Eliz.* *cap.* 1 & 2.

Prieſts, &c. { Thoſe who receive them, being Natives of *England*, and ordained by the See of *Rome.* 27 *Eliz.* *c.* 2.

Rape. — 18 *E.* *c.* 7.

Rioters. — 1 *G.* 1. *c.* 8.

Rob. Churches & Chap. { If found guilty upon Indictment. 23 *H.* 8. *c.* 1.

Robbery on the High-way. If mute, or challenge above 20. 25 *H.* 8. *c.* 3. If attainted. 1 *Ed.* 6. *c.* 12.

It muſt be alledged to be done *in alta via Regia*; tho' if it be *in via Regia* without *alta*, he ſhall not have Clergy. *Moor* 5 *Het.* 75. *Mod.* 5.

Robbery in a Dwelling-houſe. Taking Goods by Day or by Night, the Owner or other Perſon being there, and put in Fear; or ſhall rob any Dwelling-houſe in the Day-time, any Perſon being therein; or break a Dwelling-houſe, Shop, or Ware-houſe thereunto belonging, in the Day-time, and taking Goods to the Value of 5*s.* tho' no Perſon be therein; the principal Offenders and the Acceſſaries, and thoſe who counſel, hire, or command any Perſon to commit Burglary, being indicted, ſtanding mute, or challenging above twenty. 39 *Eliz.* *c.* 15. All Perſons who by Night or Day, in any Shop, Ware houſe, Coach-houſe, or Stable, ſhall privately and felonioufly ſteal any Goods of the Value of 5*s.* or more, tho' ſuch Shop, *&c.* be not broke up, and tho' no Perſon be in ſuch Shop, *&c.* or that ſhall aſſiſt in committing ſuch Offence. 10 *W.* 3. *c.* 23.

Ship. Deſtroy'd by Mariners. 1 *Ann.* *c.* 9. 4 *G.* 1. *c.* 12.

Stamps. On Paper. 9 & 10 *W.* 3. *c.* 25. 6 *G.* 1. *c.* 21. 6 *G.* 1. *c.* 4. On Cards, Dice, Linen, Silks, and Leather. 9 *Ann.* *c.* 11. *c* 23. 10 *Ann.* *c.* 19. 5 *G.* 1. *c.* 2. 6 *G.* 1. *c.* 21.

Soldier. Departing without Licence. 2 *Ed.* 6. *c.* 2. wandring without a Teſtimonial from a Juſtice, offending againſt 39 *Eliz.* *c.* 17.

South-Sea Bonds. 9 *Ann.* *c.* 21. 6 *G.* 1. *c.* 4.

Stabbing. Perſon not having a Weapon drawn, or not ſtriking firſt, and Death enſuing within ſix Months. 21 *Jac.* 1. *c.* 8. but Acceſſaries have Clergy. 44. 44*l.*

Returning within the Time after Tranſportation. 4 *G.* 1. *c.* 11. 5 *G.* 1. *c.* 28. 6 *G.* 1. *c.* 23. Treaſon

Treaſon Petty.	Perſons found guilty after the Laws of the Land for *Petty Treaſon*. 23 *H.* 8. 28 *H.* 8. 32.
Woollen-Cloth.	Cloth cut and taken, ſtole or carried away, from Tenters in the Night-time. 22 *Car.* 2. *c.* 5.
Woman.	Stoln, having Lands or Goods, or being Heir apparent, he that marries, defiles, or receives her knowingly. 3 *H.* 7. *c.* 2.

Clergy taken from Acceſſaries by Statute. For 'tis a Rule in Law, Where a Statute takes away Clergy from the Principal, it is not by that Means taken away from the Acceſſary, unleſs particularly named. 3 *Inſt.* 29.

In Burglary.	Acceſſaries before and after the Fact. 3 & 4 *W.* & *M.*
In Burning Houſes or Barns.	Acceſſaries in all Caſes of 4 & 5 *Ph.* & *M. cap.* 4.
Buying and receiving ſtoln Goods.	Knowing them to be ſtoln, are Acceſſaries to the Felony after the Fact. 3 & 4 *W.* & *M. c.* 9.
Murder.	Acceſſaries before the Fact. 4 & 5 *Ph.* & *M. cap.* 4.
1 *Anderſon*, 195. Pick-Pocket.	Acceſſaries, *viz.* to thoſe who rob any Perſon. 3 & 4 *W.* & *M.*
Rape.	— Acceſſaries.
Robbery in the High-way, or Dwelling-Houſe.	Acceſſaries in all Caſes. 4 & 5 *Ph.* & *M. c.* 4. The Words of the Statute *Ph.* & *M* are, *viz.* If a Man ſhall maliciouſly command, &c. another. So that *maliciouſly* being a material Word, and particularly mentioned in the Statute, the Indictment is not good without it.
H. P. C. 231. Dyer 183.	Acceſſaries to robbing Dwelling-houſe, Shop, or Warehouſe, and taking in Money, or Goods, to the Value of 5 *s.* 3 & 4 *W.* & *M.*

Woman. { Convicted of an Offence, for which a Man may have Clergy, ſhall, upon her Prayer, ſuffer the ſame Puniſhment the Man ſhould, and may be kept in Priſon not exceeding a Year; but upon her ſecond Conviction ſhall ſuffer Death. 4 & 5 *W.* & *M.*

Clerk of the Crown, of the Peace, or of the Aſſizes, certifying by Tranſcript, the Indictment, or the Tenor thereof to the Judges, or Juſtices in any other County, that the Perſon had the Benefit of the Clergy, that ſhall be a ſufficient Proof thereof.

Clergy ſhall be allowed in all Caſes, ſaving ſuch as mention'd 1 *Edw.* 6. *c.* 12. or particularly taken away by expreſs Words ſince that Time. *Cr.* 118. *nu.* 33.

Clerk of the Peace, and Cuſtos Rotulorum.

BY Statute of 37 *Hen.* 8. *c.* 1. the *Cuſtos Rotulorum* in every County is to be appointed by the King during Pleaſure, and the Clerk of the Peace was to continue in his Office no longer than the *Cuſtos*.

Clerk of the Peace how removable 4 Mod. 167.

But by *Stat.* 1 *W.* & *M.* the *Cuſtos Rotulorum* is to appoint a Clerk of the Peace to enjoy the Office *Quam diu bene ſe geſſerit.* And Clerk of the Peace miſdemeaning himſelf in his Office, the Juſtices of Peace, in their General Quarter-Seſſions, or the major Part of them, upon Complaint in Writing, may ſuſpend or diſcharge him. And, in ſuch Caſe, the *Cuſtos Rotulorum*, or other Perſon to whom of Right it doth belong, ſhall appoint another Perſon, reſiding within ſuch County, *&c.* in his Room, and in caſe of Neglect, or Refuſal, to make ſuch Appointment, before the next General Quarter-Seſſions, after ſuch Refuſal, the Juſtices of Peace, at their General Quarter-Seſſions, may appoint one who ſhall be liable to all the Penalties, Conditions, *&c.* thereby mentioned, and may be diſcharged by the ſaid Juſtices as aforeſaid. 1 *W.* & *M.* *c.* 21.

Clerk of the Peace, how made.

So that by this Act, the Power of the *Cuſtos Rotulorum* is abridg'd, for before he might appoint any Perſon

at large; but now the Perſon appointed muſt be Reſident in the County. Formerly the *Cuſtos* might remove the Clerk, &c. and the Seſſions could not, for they had only Power to ſuſpend him for any Misbehaviour; but now the Juſtices may remove him upon a Complaint exhibited in Writing, and due Proof thereof, and the *Cuſtos* cannot; and if he appoint not another, before the next Seſſions, the Juſtices may do it.

Clerk of the Peace, his Duty, &c.

He is to be preſent at the Seſſions, and to draw up the Proceſs of the Court. He is to read Indictments, and to record the Proceedings of the Juſtices.

He muſt record the Rates of Servants Wages, and inrol the Diſcharge of Apprentices. 5 *Eliz. c.* 4.

He is to certify into *B. R.* the Tranſcripts of Indictments, Outlawries, and Convictions, before the Juſtices, within 40 Days next after the Conviction, &c. or within 20 Days after the Beginning of the Term next enſuing, or forfeits 40*s.* to the King and Proſecutor. 34 & 35 *Hen.* 8. *c.* 14.

He muſt record the Preſentments for not coming to Church, and the Certificate for not taking the Oath of Allegiance. 3 *Ja.* 1. *c.* 4.

His Fees by the Stat.

For inrolling a Bargain and Sale of Lands, not exceeding 40*s.* *per Ann.* 1*s.* and if it doth exceed that Value, then 2*s.* 6*d.* 27 *Hen.* 8. *c.* 16.

He keeps the Books of Licenſes given to Badgers and Loaders of Corn. 5 *Eliz. c.* 12.

For a Licenſe and Recognizance for a { Badger, Drover, Lader, Kidder, } 2*s.*

If he take more, he is fineable, &c.

He muſt take nothing of any Witneſs who ſhall give Evidence againſt a Felon; nor take more than two Shillings for drawing any Bill of Indictment againſt a Felon, on Forfeiture of 5*l.* with full Coſts.

If he draws a defective Bill, muſt draw a new one gratis.

And if he draws a defective Bill, he ſhall draw a new one without any Fee, under the Penalty of the like Forfeiture, to be recover'd by him who ſhall ſue for the ſame in any Court of Record.

Clerk of the Peace is Clerk to the Juſtices, as the Statute 12 *Rich.* 2. *cap.* 10. nameth him, and not Clerk to the *Cuſtos Rotulorum* only. *Lamb.* 394.

Clerk of the Peace may exerciſe his Place by himſelf, or by his Deputy ſufficiently inſtructed in the Law, and admitted by the *Cuſtos Rotulorum*. *Lamb.* 394. *Stat.* 1 *W. & M.*

Juſtices can't diſcharge Clerk of Peace without Articles in Writing.

The Juſtices of Peace can diſcharge no Clerk of the Peace, for a Fault appearing in Court, without Articles in Writing. *Mich.* 3 *W. & M. B. R. Shower's Reports* 282. *The King and Queen* verſ. *Evans.*

The *Cuſtos Rotulorum* is to name the Clerk of the Peace, but he is in by the Statute, and hath an Eſtate for Life in his Office, but removeable by the Juſtices for Misbehaviour. *Trin.* 5 *W. & M. B. R. Shower's Reports*, from *p.* 156 to 537. *Harcourt* verſus *Fox. Mod. Rep.* 167 to 174. *S. C.* And there 'tis ſaid, that the Judgment was affirm'd in Parliament.

Cuſtos Rotulorum muſt appoint him quamdiu bene geſſerit.

Where a *Cuſtos Rotulorum* did appoint one to be Clerk of the Peace *durante beneplacito*, the whole Court gave Judgment, that by the Act, the *Cuſtos* being to nominate a Clerk of the Peace, to execute that Office for ſo long Time as he ſhall well demean himſelf, if he appoint him in any other Manner, he is no Clerk of the Peace. *Trin.* 6 *W. & M. B. R. Mod. Rep.* 293. *The King and Queen* verſ. *Owen.*

A *Cuſtos Rotulorum* being diſplaced, and a new one put in his Room, to whom the Clerk of the Peace refuſed to deliver the *Rolls*, for which he was indicted, and found guilty, and thereupon he was removed from his Office, and he brought a *Mandamus* to be reſtored; and this Matter being return'd, it was ſaid, That tho' he has a more fix'd Eſtate in his Office, than the *Cuſtos* hath, yet ſtill he is but his Deputy, and is to be removed by a Charge exhibited againſt him in Writing to the Juſtices of Peace: And therefore the Clerk of the Peace was not reſtored by the Opinion of three Judges, contrary to the Opinion of *Holt, C. J. B. R. Hill.* 6 *W. & M.* 4 *Mod. Rep.* 31. *The King and Queen* verſ. *Evans.*

He is to file the Hall-keeper of *Blackwel Hall* his Certificate of the Length and Breadth of Cloth, and for ſo doing, ſhall have 1 *s.* and to give an atteſted Copy of ſuch Certificate to any Perſon demanding the ſame, for which he ſhall receive 1 *s.* and no more. 1 *Geo.* 1. *cap.* 15.

The *Cuſtos Rotulorum* is not to ſell the Place of Clerk of the Peace, on Pain of forfeiting the Office of *Cuſtos Rotulorum*, and double the Value of the Sum given; and the Party ſhall be diſabled to enjoy it, *&c.*

The

The Clerk of the Peace is to make a Note of the Day, Month, and Year of exhibiting Informations triable by the Juſtices of Peace in Seſſions; and from that Time they ſhall be accounted a Record; and the Name of the Proſecutor, and upon what Statute the Proſecution is made, is to be endorſed by the Clerk of the Peace, or he ſhall forfeit 40*s.*

He is to enter in a Book the Liſts of Perſons qualified to ſerve on Juries, deliver'd in by the Conſtables, *&c.* and ſhall make and deliver to the Sheriff a Duplicate of thoſe Liſts by a Time limited. 7 & 8 *W.* 3. *c.* 31.

He is to put and keep among the Records of the Seſſions the Poll-Books, deliver'd over by returning Officers on the Election of Members of Parliament.

The Clerk of the Peace is to keep the Rolls 'till the Proceſs thereon be compleated, and then they are to be delivered to the *Cuſtos*. *Black.* 96.

Clipping and Coining. See Treaſon.

Clothiers and Cloth.

THE Woollen Manufacture has for ſeveral Ages been the Care of this Kingdom, inſomuch, that near one Hundred ſeveral Acts of Parliament have from Time to Time been made to ſupport, regulate, and encourage it; many of the ſaid Acts are very long, and no way concern the Office of a Juſtice of Peace; and therefore it cannot be expected, that this ſhort Treatiſe ſhould give an Abſtract of them all. I ſhall only give a Liſt of them, and briefly touch on thoſe wherein Juſtices of Peace are concern'd.

The firſt Act is ſo long ago as in 11 Year of *Edw.* 3. by which it is provided, That no Cloths made beyond Sea, ſhall be brought into the King's Dominions on Pain to forfeit the ſame, and to be further puniſh'd at the King's Will. Then follow 12 *Edw.* 3. 14 *Edw.* 3. 25, 27, 31, 37, 47, 50 *Edw.* 3. 3, 7, 12, 13, 15, 17 *R.* 2. 1, 4, 7, 9, 11, 13 *H.* 4. 8, 10, 11, 20, 23, 33 *H.* 6. 4, 7, 12, 17 *Edw.* 4. 1 *R.* 3. 3, 4, 11, 19 *H.* 7. 1, 3, 4, 5, 6, 14, 15, 22, 23, 24, 25, 26, 28, 33, 35, 37 *H.* 8. 1, 3, 4, 5 *Edw.* 6. 1 *Ma.* 1. 1, 2, 3, 4, 5 *Phil.* & *Ma.* 1, 5, 8, 18, 27, 35.

43 *Eliz.* 1, 3, 4, 7, 21 *Jac.* 1. 12, 14, 15, 18, 20, 22, 23, 30, 32 *Car.* 2. 1 *Jac.* 2. 1, 2, 4, 5, 6 *W. & M.* 7, 9, 10 *W.* 3. 1, 2, 3, 4, 7, 8, 9, 10 *Ann.* 1, 11, 12, 13 *Geo.* 1.

Clothiers ſhall pay their Work-folks their Wages in ready Money, and not in Wares, as formerly, on Pain to forfeit to ſuch Work-folks treble Damages, or Sums due to them, and ſhall deliver them Wool according to due Weight, on Pain of forfeiting 6 *d.* for every ſuch Default.

Every Juſtice of Peace, Conſtable of any Hundred, or Steward of a Leet out of Corporations, and in Corporations, every Head Officer, or Officers, where no Mayor is, and every Mayor ſhall hear and determine ſuch Complaints, as well concerning the Labourers Wages, as the Damages aforeſaid; for which ſaid Damages they ſhall alſo have Power to commit the Offender to Priſon, until the Party grieved be ſatisfied. 17 *Edw.* 4. *c.* 1.

By Statute 1 *Geo. c.* 15. the Penalty of Clothiers impoſing Goods on their Work-folks in lieu of Money is 40 *s.*

Juſtices of Peace, and Head-Officers, ſhall, in their ſeveral Precincts, appoint and ſwear Officers, or Overſeers, for the due obſerving of the Statute of 3 & 4 *Edw.* 6. *c.* 2. concerning the well ordering of Cloth, who ſhall have Power to make Search accordingly. Forfeitures to be divided betwixt the King and Overſeers.

No Overſeer duly choſen ſhall refuſe to execute the Office, on Pain of 40 *s.* The Overſeers ſhall once every Quarter, make due Search, on Pain of 10 *l.* None ſhall interrupt the Overſeers in their Office, on Pain of 20 *l.* None ſhall take Advantage of the Forfeitures given by this Act, unleſs the Suit be commenced within one Year after they accrue. 3 & 4 *E.* 6. *c.* 2.

Faulty Cloaths, in Weight or Meaſure, expoſed to Sale by Retail, forfeited; to be divided into three Parts, the 1ſt to the King, the 2d to the Juſtice, and the 3d to Informer. Perſons not trying Cloaths to be bought and ſold, and not ſeizing and preſenting them, if faulty, forfeit double the Value of the Cloth.

Note; All Statutes repugnant to this, repeal'd. Two Juſtices of the County, and chief Magiſtrates in Corporations, have Power of hearing Complaints. 5 & 6 *Edw.* 6. *cap.* 6.

Two

Two Juſtices in Counties, and the chief Officers in Corporations, may appoint and ſwear Overſeers, and Searchers for faulty Cloth, *per* 39 *Eliz. cap.* 20.

Juſtices may ſearch after, and ſeize Ropes, Winches, and Engines uſed for ſtretching *Northern* Cloths; and he who oppoſes, forfeits 10 *l.* 39 *Eliz. cap.* 20. And by 21 *Jac.* 1. the Overſeers may do the like.

All Penalties for want of Length, Breadth, or Weight of Cloth, ſhall be equally divided into three Parts; one to the Searchers, the other two to the Poor of the Pariſh. *See Stat.* 21 *Jac.* 1. *cap.* 18. how to be recovered. Theſe Penalties are under the Power of Juſtices of Peace; and for their Directions herein ſee *Stat.* 4 *Jac.* 1. *cap.* 2. 27 *Eliz. cap.* 17. 4 & 5 *Ph. & M. c.* 5. 5 & 6 *Ed.* 6. *c.* 6. 35 *Eliz. c.* 10. 8 *Eliz. c.* 12.

Two Juſtices in a County, and chief Officer, if in a Corporation, with another joined with him, may, either order Satisfaction to be made (double Value by 1 *Ann.*) or order the Offender to be whipp'd, and put in the Stocks. A Sorter, Carder, Kember, Spinſter, or Weaver of Wool, found Guilty by Confeſſion, or Oath of one Witneſs, of imbezilling or detaining Wool from the true Owner, and the Receiver is liable to the ſame Puniſhment. 7 *Jac.* 1. *cap.* 7.

Juſtice negligent in appointing Overſeers, or otherwiſe, in his Duty, according to 39 *Eliz.* forfeit 5 *l.*

Juſtice negligent in his Duty, forfeits 5 *l.*

Juſtices of Peace have Power to hear and determine theſe Offences in their Seſſions; and Juſtices of Aſſize to convict Juſtices of Peace, who are negligent, upon Proof of two Witneſſes.

Any two Juſtices of Peace may call before them any Perſon ſuſpected for making deceitful Cloth; and if upon Confeſſion of the Party, or Teſtimony of two Witneſſes, they ſhall find any guilty thereof, and make Certificate accordingly under their Hands and Seals, to the Church-wardens and Overſeers of the Poor of the Pariſh where the Offence is committed, thoſe Officers ſhall levy 5 *l.* by Diſtreſs and Sale of Goods, and for want of Diſtreſs, the Offender ſhall ſuffer Impriſonment. 21 *Jac.* 1. *cap.* 18.

Overſeer, when choſe, if he refuſe to execute his Office, forfeits 5 *l.* and to be committed till paid, by 39 *Eliz. c.* 20.

Duty of Overſeers, &c.

He muſt ſearch once a Month for Defects in the *Northern* Cloaths. 39 *Eliz. c.* 20.

The Overſeer muſt fix a Leaden Seal to each Cloth, containing the Length and Breadth thereof, with the Word (*Searched*) and his Name thereon; and this is an Exemption from any further Search. And when a Seal is ſo fixed, if any Perſon beſides the Overſeers, ſhall take away the ſame without Warrant, and thereof ſhall be convicted by the Oath of two Witneſſes, or Verdict, he forfeits for the firſt Offence 10*l.* for the ſecond 20*l.* to be divided into three Parts; one to the King, a ſecond to the Informer, and the third to the Poor of the Pariſh; and the Offender to ſtand in the Pillory. 39 *Eliz. c.* 20.

If any Perſon beſides the Overſeer, ſhall fix a Seal without a Warrant, he is liable to the ſame Penalties.

A Searcher may enter into any Houſe, or other Place, to find bad Cloth; and if he find any, he ſhall ſtamp the Word (*Faulty*) on the Seal; but he muſt not ſearch Cloth ſearched before, on Pain of 5*l.* See Stat. of 12 *Car.* 2. *c.* 22. relating to the Manufacture of Bays at *Colcheſter*.

Yorkſhire Cloths muſt be of the Lengths and Breadths preſcribed by 7 *Ann. c.* 13. & 1 *Geo. c.* 15. on Penalty of 20*s.* Conviction before one Juſtice, by Oath of Overſeer of Cloth, or any other Witneſs.

The Duty of Owners and Occupiers of Fulling-Mills.

Owner of every Fulling-Mill, ſhall affix a Seal of Lead, with his Name, and the Length and Breadth of Cloth when wet, on Penalty of 20*s.* Every Perſon who takes off, defaces, counterfeits, or alters the Figures on the Seal of the Cloth before ſold, or that ſtretches or ſtrains Cloth when wet, more than allowed by the Act; or Occupier of Fulling-Mill, cauſing to be mill'd in any one Stock at the ſame Time, more than one Whole Broad-cloth, or two half Broad-Cloths, forfeits 20*s.* Conviction as before. Penalty to Poor of Pariſh, where, &c. and Informer. Not paying in ſeven Days, to be levied by Diſtreſs and Sale; for want, to be ſent to the Houſe of Correction, not exceeding a Month. Information in ten Days; Appeal to Quarter-Seſſions; Appellant to pay Coſts, if Appeal not allowed. 7 *Ann. c.* 13.

By 10 *Ann. c.* 16. all mixed, or medly Broad-cloth ſhall be meaſur'd at the Fulling-Mill, after 'tis mill'd by the Maſter of the Mill, who ſhall firſt take an † Oath before ſome near Juſtice, that he will truly perform ſuch Meaſuring (the Juſtice to give him a Certificate of his having ſo done) and ſhall fix at the Head-end

† By 1 Geo. c. 15 refuſing to take the Oath forfeits 20 l.

Head-end of ſuch Cloth, before carried away, a Seal of Lead, and rivet the ſame, and ſtamp his Name thereon, mentioning in Figures the Length and Breadth, for which the Owner ſhall pay him a Penny. And the Numbers ſo ſtamped ſhall be a Rule of Payment to the Buyer, except by Accident any Part be damaged, and taken off, and then the Part not damnified, ſhall be again meaſured, ſealed, *&c.*

If the Maſter of the Mill refuſe, or neglect to affix ſuch Seal, or any Perſon afterwards take it off, or deface or alter the Figures before the Cloth is ſold; and if the Buyer refuſe to accept the ſame, according to ſuch Meaſure. The Offender convicted on Oath forfeits † 20 *s.* for each Cloth.

† By 1 Geo. c. 51. forfeits 20 *l.* inſtead of 20 *s.*

No Clothier, Fuller, *&c.* after ſuch Cloth is fully wet, ſealed, and ſtamped, ſhall ſtretch any Cloth above one Yard in 20 Yards Length, or above one Nail in a Yard in Breadth, on Penalty of 20 *s.*

And every Mill-man ſhall keep in his Mill a Table, or Board 12 Feet long, and three Feet wide, whereon the Cloth ſhall be creſſed, and laid plain with the Length of a Yard mark'd thereon, with one Inch more, *viz.* 37 Inches long, and in Default thereof, he forfeits 10 *l.*

Every Clothier, Cloth-worker, *&c.* ſhall make Payment in Money to all employ'd in the Woollen Manufacture for all Work done, and ſhall not impoſe on them any Goods or Wares inſtead of Money on Forfeiture of 20 *s.*

All Offences againſt this Act to be heard by one Juſtice not concern'd in the Matter.

All Offences againſt this Act to be heard and determin'd by one or more Juſtices of the Places where committed, (provided the Juſtice be not concerned in the Matter of the Complaint) on Oath of one Witneſs; and all Penalties are one Half to the Informer, and the other to the Poor of the Pariſh. And the Offender refuſing Payment for fourteen Days after Conviction, the Juſtice may grant his Warrant to levy it by Diſtreſs, returning the Overplus (if any); and if no Diſtreſs, commit to Gaol, or Houſe of Correction, not exceeding three Months for one Offence, and all Offences to be proſecuted within thirty Days after they are committed, or diſcover'd; but an Appeal lies to the next General Quarter Seſſions, on giving Notice thereof. And if the Juſtices there confirm or diſannul the former Order, they ſhall allow ſuch Coſts to the Party grieved, as they ſhall think reaſonable to be levied, *&c.* as is uſual

in

in Caſes of Appeal. *Vide* 10 *Ann. c.* 21. & 12 *Ann. Seſſ.* 2. *c.* 20.

10 Ann. c. 16. Perſon ſued may plead general Iſſue, and give this Act in Evidence, &c.

Any Perſon ſued for any Thing done in Execution of this Act, may Plead the General Iſſue, and give this Act, and any Special Matter in Evidence; and if he recover, ſhall have treble Coſts. And this Act ſhall be a publick Act, but ſhall not extend to any Cloth made or manufactured in the County of *York*, nor to invalidate any of the Powers contain'd in the Stat. 7 *Ann.* for aſcertaining the Lengths and Breadths of Woollen-Cloth made in the County of *York*.

All mixed or medly Cloth is to be put into Water, &c.

All mixed, or medly Broad-cloth, ſhall, at the Inſtance of the Buyer, be put into Water, and then meaſured by two indifferent Perſons, one choſen by the Buyer, the other by the Seller; if they cannot agree, a third Perſon to be choſen; he refuſing, then the Keeper of *Blackwel-Hall*, if in *London*, ſhall determine it, being firſt ſworn before ſome Juſtice well and truly to perform ſuch Meaſuring; if not in *London*, then by the Magiſtrate or chief Officer of ſuch Place where, &c, as aforeſaid. 6*d.* Reward for Meaſuring, to be paid by the Buyer: If leſs Quantity in Length or Breadth than mentioned on the Seal, then every ſuch Clothier, Owner, or Seller, ſhall forfeit the ſixth Part of the Value of the Cloth. Conviction on Oath before one Juſtice. Owner, or Millman of any Fulling-Mill, refuſing or neglecting to take an Oath for true Admeaſuring Cloth, &c. or to fix a Seal of Lead at one End of ſuch Cloth, with his Name, Length and Breadth of ſuch Cloth; or to enter in a Book in ſuch Manner as aforeſaid, ſhall forfeit 20*s.* to *Chriſt's Hoſpital*, if in *London*; if in any other Place, to the Poor, where, &c. Conviction by Oath of one Witneſs, (one Juſtice) on Refuſal to pay within 30 Days, to be levied by Diſtreſs and Sale, by Warrant from one Juſtice; for Want, to be committed for three Months. *Note*; The Forfeiture of 20*l.* diſchargeth the Forfeiture of 20*s.* Buyer of, &c. ſhall give 2 Days Notice to Seller, that his Cloth ſhall be wetted for Proof of Admeaſurement. Mixed, or medly Broad-cloths, ſhall be ſtamped with the Watch Meaſure thereof, or the Seal of the Maſter, &c. by whom wetted. Clothier ſelling ſuch Cloth, before it be ſealed and ſtamped as aforeſaid, with the Name of the Maſter, &c. Length and Breadth, &c. with the Mark of a Crown on the Rivet of the Seal, ſhall forfeit the ſixth Part of the ſaid Cloth, to be

And to be ſtamped, &c.

be levied and diſpoſed of as aforeſaid. Proſecution in forty Days in all Caſes, ſaving where the Millman refuſeth to pay his Forfeiture for want of Length or Breadth in Admeaſurement.

Perſons aggrieved may appeal to Quarter-Seſſions, who may finally determine and give Coſts. Not to affect any Factor or his Agent, only employ'd in the Sale of, &c. All Perſons concerned in the Woollen Manufacture, ſhall pay their Servants their Wages in Money, and not in Goods or Wares, on Penalty of 40 *s.* to be recover'd and diſpoſed of as before. *Yorkſhire* Cloths called, &c. ſhall be of ſuch Meaſure, &c. *Vide* the Act, on Penalty of 20 *s.* and 40 *s.* Penalty for any Perſon to put any other Perſon's Name on his Cloths than his own. 1 *Geo. c.* 15.

Perſons aggrieved may appeal to Quarter-Seſſions.

This Act not to extend to any Cloth made or manufactured in the County of *York*.

Any Juſtice, Overſeer, &c. may ſearch for Tenters, &c. whereby Deceit may be uſed about ſtretching Woollen-Cloth; for the firſt Offence he may deface them, for the ſecond ſell them; but two Juſtices muſt ſell them. 43 *Eliz. c.* 10.

The Juſtices, upon Information, muſt execute this Law in ſeven Days, on Penalty of 5 *l.* Clothiers refuſing to pay Wages aſſeſſed at the Seſſions, and convicted thereof before two Juſtices (*Quorum unus*) as aforeſaid, ſhall forfeit 10 *s.* to the Party grieved, to be levied by Diſtreſs. 1 *Ja.* 1. *c.* 8.

See Stat. 14 *Ca.* 2. *c.* 32. for the Power of Juſtices in the *Weſt-Riding* of *Yorkſhire*, and for *Norfolk* and *Norwich*, and alſo the Town of *Kederminſter*.

For the Prohibiton of Foreign Wool, Cards, Cardwires, or Iron Wire, or making Wool-cards, and the Puniſhment thereof, ſee 14 *Car.* 2. *c.* 19.

By Stat. 12 G. 1. All Contracts, Covenants or Agreements, and all By-laws, Ordinances or Orders, in unlawful Clubs and Societies, between Perſons brought up Woolcombers or Weavers, for regulating the Trade, or ſettling the Prices of Goods, or for advancing their Wages, or leſſening their uſual Hours of Work, are illegal and void; and if any concern'd in the Woollen Manufactures ſhall keep up any ſuch Contract or Combination, being convicted on Oath before two or more Juſtices on Information, within three Calendar Months after the Offence committed, he ſhall be ſent, either to the Houſe of Correction not exceeding three Months, or to the Common Gaol without Bail.

All Contracts, &c. for advancing Wages, &c. are void, &c.

If

None to return Work before 'tis finish'd, &c.

If any Perſon retained as a Woolcomber or Weaver, ſhall depart from his Service before the End of the Term for which he ſhall be hired, or ſhall return his Work before it is finiſhed according to Agreement, unleſs for ſome reaſonable Cauſe, he ſhall be committed to the Houſe of Correction not exceeding three Months; and if any Workman ſhall wilfully damnify his Work, he ſhall forfeit to the Owner double the Value, or be committed to the Houſe of Correction.

Clothiers to pay their Work Folks in Money, &c. or forfeit 10 l.

Every Clothier ſhall pay the full Prices agreed on in Money, and not in Goods; and any two Juſtices on Complaint may ſummon the Party Offending, and for Non-payment of Wages may iſſue their Warrants for levying thereof by Diſtreſs, and for want of Diſtreſs, may commit the Party to the common Gaol for ſix Months, or till he pay the Wages.

If any Clothier ſhall pay the Perſons imployed by him, either in Goods or by way of Truck, he forfeits 10 *l.* Moiety to the Informer, Moiety to the Party aggrieved.

Perſons aggrieved by Order of Juſtices may appeal to the next Quarter-Seſſions giving reaſonable Notice of ſuch Appeal; and if it ſhall appear to them, that reaſonable Notice was not given, they ſhall adjourn the Appeal to the next Quarter-Seſſions, and then finally determine the Matter, and may award reaſonable Coſts to either Party.

If any aſſault a Maſter Woolcomber, &c.

If any Perſon aſſault a Maſter Woolcomber or Weaver, whereby he receives any bodily Hurt, for not ſubmitting to any illegal By-laws, or ſhall write or ſend any Letter or Meſſage threatning Hurt to a Maſter, or to burn, or to pull down his Houſe, or to cut down his Trees, or maim his Cattle for not complying with their Demands, being thereof convicted upon any Indictment to be found within 12 Calendar Months next after the Offence, he ſhall be adjudged guilty of Felony, and be tranſported for ſeven Years to ſome of the Plantations in *America*.

If any deſtroy Woollen Goods in the Loom, &c.

If any ſhall break into a Shop by Day or Night to deſtroy any Woollen Goods in the Loom, or any Tools imployed in making thereof, or ſhall cut or deſtroy any ſuch Goods in the Loom, or on the Rack, or ſhall deſtroy any Rack or Tools, he ſhall be adjudged a Felon, and Suffer Death without Benefit of Clergy.

This Act, and all the Proviſo's therein, ſhall extend to Combers of Jerſey and Wool to Frame-work Knitters, or Makers of Stockings, and to all Perſons concern'd in any of the ſaid Manufactures.

By Stat. 13 G. 1. No Maker of mixed Medly or white Cloth ſhall uſe any Warping-bars, but only ſuch as ſhall be of the Meaſure and Length following: *viz.* Every long Warping bar ſhall be in Length three Yards and three Inches and no more, and every round Warping-bar four Yards and four Inches round and no more, and the Thrums at the end of Bars ſhall not exceed 18 Inches in Length, on Forfeiture of 10 *l.* The Meaſures of Warping-bars.

Every Maker muſt give out all Wool, Yarn, or other Materials by Weight, after the Rate of 16 Ounces to the Pound, and ſhall receive back the ſame by the ſame Weight without Fraud, on Pain of forfeiting 10 *l.*

No Clothier ſhall uſe any Ends of Yarn, Wefts, or other Refuſe (Flocks and Pinions only excepted) by working them up again on Pain of 3*l.* No Clothier to uſe Ends of Yarn, &c.

All Proſecutions for Offences contrary to this Act, ſhall be heard by two or more Juſtices for the Place where the Offence was committed who are to determine the ſame; and on every Conviction to iſſue their Warrants to levy the Penalties by Diſtreſs and Sale of the Offender's Goods; one Moiety to the Informer, the other to the Poor of the Pariſh, and for want of Diſtreſs, to commit the Offender to the County Gaol not exceeding three Months, or till Satisfaction made.

All Diſputes relating to Work, Wages or Damages, betwixt Clothier and Weaver, ſhall be heard by two or more Juſtices where the Diſpute ſhall ariſe, who are to ſummon the Parties, examine on Oath, and give ſuch Satisfaction and Coſts as to them ſhall ſeem reaſonable, and iſſue their Warrants to levy by Diſtreſs, and for want thereof, to commit the Offender to the County Gaol not exceeding three Months, or till Satisfaction. All Diſputes about Wages to be heard by two Juſtices, &c.

Perſons aggrieved may appeal to next Quarter-Seſſions, giving ſix Days Notice in Writing of ſuch Appeal; and Quarter-Seſſions are to make ſuch Order, and give ſuch Coſts as they think reaſonable, and to levy ſuch Coſts by Diſtreſs, *&c.* and ſuch Order ſhall be final; nor ſhall the Proceedings of Juſtices out of Seſſions or in Seſſions be removed by *Certiorari.* Perſons aggrieved may appeal.

On Information on Oath, that any Perſons are (or are ſuſpected to be) guilty of any of the ſaid ill Practices, any two or more Juſtices are to iſſue out their Warrants to any Conſtable or other Peace-Officer, or to any Church-warden or Overſeer, directing him in the Day-time, to enter into any Houſe, or other ſuſpected Place, to ſearch for and examine all Bars and Weights made uſe of by any Clothier or Maker of

Woollen Cloths; and if any Clothier or Maker ſhall interrupt ſuch Officer in the Execution of his Office, he ſhall forfeit 5 *l.*

Any Peace-Officer by Warrant may ſearch any End-gatherer, his Bag or other Convenience, buying or any ways carrying Ends of Yarn, Wefts, Thrums, ſhort Yarn, or other Refuſe of Cloth; and if he finds any Ends of Yarn, *&c.* (Flocks and Pinions only excepted) he ſhall carry him before one or more Juſtices where he ſhall be found, and on due Conviction on Oath of one or more Witneſſes, or by Confeſſion of the Party, he ſhall be deemed a dangerous and incorrigible Rogue, and puniſh'd as is directed by Stat. 12 *Ann.*

Every Maker ſhall pay the Weaver according to the Number of Yards that the Chains are laid on the Warping-bars, on Forfeiture of 5 *l.*

Every Owner of Tenters must meaſure and mark his Tenters.

Every Owner of Tenters or Racks in the Counties of *Glouceſter*, *Wilts* and *Somerſet*, ſhall meaſure his Tenters or Racks, and mark in Figures the true Length of Yards of each Tenter or Rack upon the top Bar; and on the foreſide thereof, each Yard to contain 36 Inches, to which ſhall be added one Inch more in lieu of the over Meaſure, on Pain of 5 *l.*

Juſtices to chooſe Inſpectors.

Juſtices for the ſaid Counties in their *Eaſter* Quarter-Seſſions yearly, ſhall chooſe ſo many skilful Men as they think reaſonable to be Inſpectors for the Year enſuing, and may allow each of them not exceeding 30 *l. per Ann.* to be paid by the County Treaſurers; which Inſpectors ſhall at all reaſonable Times (*Sundays* excepted) inſpect every Mill-ſhop, Outhouſes, and Tenter-ground of Clothiers, Millmen and others concern'd in making Woollen Cloth, and are to meaſure every Tenter, and every Cloth before it be carried thence; and ſhall ſtamp his Name on a lead Seal to be furniſh'd by the Maker, and fix it on the Head of every Cloth, and ſhall keep a Regiſter of the Clothier's, Millman's, or other Perſon's Name, and the Number, Length and Breadth of every Cloth made in their Diviſions; and ſhall at every Quarter-Seſſions give in a true Copy of ſuch Regiſter, with what Penalties have been levied within their Diviſions: Every Inſpector before he enters on his Office, muſt take an Oath well and truly to execute his Office according to the Laws of this Realm, and the beſt of his Skill and Knowledge; and if any Clothier, Maker, Millman, or other Perſon, ſhall refuſe the Inſpectors Entrance, he forfeits 10 *l.* and if any Inſpector act againſt his Oath, he forfeits 20 *l.*

Every

Every Maker of mixed or medley Woollen Broad Cloth, ſhall pay to the Inſpectors 2 *d.* a-piece for every Cloth he makes before the Cloths are ſent away from the Mills; and the Inſpectors every three Months, or oftner, muſt pay the Money to the Treaſurer of the County, to be applied by Direction of the Quarter-Seſſions towards the Salaries of Inſpectors; and every Mill man ſending home any Cloths before they are inſpected, for every Piece of Cloth ſo ſent home forfeits 40 *s.*

What every Clothier is to pay to the Inſpectors.

This Act ſhall not make void any Powers given by Charter, or Act of Parliament, to the Corporation of Clothiers in the City of *Worceſter*.

Every Proſecution for Clothiers paying their Labourers in the Woollen Manufacture their Wages, either in Goods or by way of Truck, or in any other Manner than in Money, ſhall be commenced within three Months next after the Offence committed.

Proſecution to be commenced in 3 Months, &c.

Any Perſon ſued for any Matter done in Purſuance of this Act, may plead the General Iſſue, and give this Act, and the Special Matter in Evidence; and if Plaintiff be nonſuited, *&c.* or a Verdict be for Defendant, he ſhall recover treble Coſts.

This Act to be allowed as a Publick Act by all Courts and Juſtices, without Special Pleading.

Yorkſhire Cloths.

BY Stat. 7 *Ann. c.* 13. If any Clothier make Cloth in *Yorkſhire*, or expoſe to Sale Broad Cloths, which after well ſcoured and milled ſhall be leſs than five Quarters and an Half within the Liſts, and an End or Half Cloth leſs than 23 Yards in Length, and a long or whole Cloth leſs than 46 Yards in Length; and any whole thick Kerſeys and whole thick Plains leſs than 17 Yards and an Half long, and three Quarters and an Half broad when fully wet, ſhall forfeit 20 *s.* for every Inch wanting in the Breadth; and for every Yard the Long Cloths ſhall exceed 46 Yards, and the Half Cloths ſhall exceed 23 Yards; and for every half Yard the thick Kerſeys and thick Plains ſhall be ſhorter than 17 Yards and an Half. Mill-man in *Yorkſhire* not fixing a Seal of Lead rivited and ſtamped, with his Name at each End of the Cloth before it is carried from the Mill, containing the Number of Yards and Inches in the Cloths in Length

The Lengths and Breadths of Woollen Cloths in the Weſt-Riding of Yorkſhire.

Mill-man muſt affix a Seal.

and Breadth when wet, ſcoured and mill'd; or if any other Perſon take off, deface, counterfeit, or alter the Figures before the Cloth is exported or ſold to Retailers, or ſtretch a Piece of Woollen Cloth more than an Inch in Breadth in a Quarter of a Yard, or a Piece of Broad Cloth more than a Yard in Length in 20 Yards, or the whole thick Kerſeys, and whole thick Plains, more than Half a Yard in every 17 Yards and an Half; or any Fuller milling or fulling in one Stock at the ſame Time more, than one whole Broad Cloth, or two half Broad Cloaths, ſhall for every Offence forfeit 20 *s.* The Conviction is to be by the Oath of any Searcher of Cloth for *Yorkſhire*, or by the Oath of one Witneſs before a Juſtice, *&c.* who is neither a Merchant or Trader in the Woollen Manufacture.

Penalty of defacing the Seal, or over-ſtretching Cloth.

Where Conviction is to be.

The Forfeiture, if not paid within ſeven Days after Conviction, to be levied by Diſtreſs and Sale of Goods, by a Warrant of the Juſtice, *&c.* before whom the Offender was convicted; one Moiety to the Informer, the other to the Poor of the Pariſh, *&c.* and if no Diſtreſs can be taken, then to be ſent to the Common Gaol, or Houſe of Correction, there to be kept to hard Labour for any Time not exceeding one Month. The Penalties muſt be inflicted within ten Days after the Offence committed or diſcovered.

Appeal.

The Party grieved may appeal to the next Quarter-Seſſions, and they may allow Coſts.

Defendant may plead General Iſſue.

If an Action is brought, *&c.* the Defendant may plead the General Iſſue, and give the Act and the Special Matter in Evidence; and if he recover ſhall have treble Coſts. This is a publick Act.

Lengths and Breadths of Kerſeys.

By Stat. 1 *Geo.* 1. *cap.* 15. All *Yorkſhire*, called whole thick Kerſeys, whole thick Plains, Huggabags, and broken quilled Kerſeys ſhall not be under 18 Yards in Length, and no leſs than three Quarters and an Half Broad by the Standard Yard-Wand, when fully wet, and ſhall be ſealed as *Yorkſhire* Cloths are directed by the Act 7 *Ann.* and under the ſame Penalties.

Penalties.

Any Clothier, *&c.* expoſing Cloths to ſell wanting one Inch in Breadth, or Half a Yard in Length, forfeits 20 *s.* or ſtretching them above an Inch in a Quarter of a Yard, or above Half a Yard in Length, forfeits the like, or fixing a Mark on it other than his own Chriſtian and Surname, and Place of Reſidence, forfeits 50 *s.* to be levied as mentioned in that Act.

The

The Penalties muſt be inflicted within 21 Days after the Offence done or diſcovered.

The Party grieved may appeal to the next Quarter-Seſſions, whoſe Determination ſhall be final, and they may give Coſts.

Lengths and Breadths of Broad Cloths.

By Stat. 11 *Geo.* 1. Every Woollen Broad Cloth made in the Weſt-Riding of the County of *York*, whether the ſame be an End or Half Cloth, or a long or whole Cloth, being well ſcoured and fully milled, ſhall be five Quarters and Half by the Standard Yard Wand in Breadth within the Liſts in the Water, being fully wet; and every ſuch Cloth called an End, ſhall not exceed in Length 24 Yards, nor a whole Cloth 48 Yards.

Penalties.

If any Clothier ſhall be convicted before a Juſtice of Peace (not being a Trader in the Woollen Manufacture) of making or expoſing to Sale any Cloth not of the ſaid Breadths, or which exceed the ſaid Lengths, he ſhall for every Inch ſhort of the Breadth, and for every Yard exceeding in Length, forfeit 20 *s.* but if a Cloth ſhall in ſome Parts thereof (not exceeding in the Whole one fifth Part of the Length) without wilful Default of the Maker, fall ſhort in the Breadth, on ſuch Accident ſuch Cloths may be ſold without incurring any Penalty.

Mill man to river a Seal of Lead, &c.

All Woollen Broad Cloth ſhall be meaſured at the Fulling-Mill, after 'tis fully milled, ſcoured, and throughly wet by the Maſter of the Mill, who is to take an Oath to meaſure it truly, who ſhall rivet a Seal of Lead, to be furniſh'd by the Clothier, on each End of the Cloth, and ſtamp his Name in Words at length thereon, and in Figures the Length and Breadth of every Cloth, for which he ſhall be paid 2 *s.* a Quarter. If Mill-man ſhall not take the ſaid Oath, or not affix ſuch Seals before Cloth be carried from the Mill, or ſhall not enter a true Regiſter of the Marks, Sort, Number, Length and Breadth of every Cloth, or ſhall refuſe to permit any Buyer or Searcher to inſpect the Books to compare the Marks, *&c.* or if any Perſon take off ſuch Seals, or counterfeit them before ſold, except a ſworn Mill-man, he forfeits 5 *l.*

Buyer may wet the Cloths if he ſuſpect Fraud, &c.

If Buyer ſhall ſuſpect the Cloth not to be of the Lengths and Breadths ſtamp'd on the Seals, in ſix Days after Delivery he may, on 2 Days Notice to the Seller, wet the Cloths 4 Hours, and cauſe them to be meaſured by two indifferent Perſons, or by a fit Perſon to be nominated by next Juſtice to be ſworn; and if Cloth be found deficient 1 5th in Length, then the Seller

ſhall forfeit 1 6th Part of the Cloth to the Poor of the Pariſh; and the Buyer ſhall be at Liberty within three Days to return the Cloth to the Seller, who is to repay him all the Money and Charges, to be aſcertained by the Buyer's Oath, and to be recovered by Warrant from one or more Juſtices, not being Dealers in Woollen Cloth.

Clothier muſt weave his Name, &c.

If any Clothier do not weave his Name and Place of Abode at Length into the Head of his Cloth, or expoſe to Sale any Cloth without ſuch Mark, or the Seals, or take off or alter the Seals before the Cloth be ſold, forfeits 5 *l.* Every Woollen Broad Cloth made in the ſaid Weſt-Riding ſhall be dreſs'd in all Parts alike; and every Cloth-dreſſer is to affix at the Head of every Cloth a Seal of Lead with his Name, on Pain of 5 *l.* Every Owner of Tenters is to mark in Figures the true Lengths of Yards of each Tenter upon the top Bar of every Tenter, on Forfeiture of 5 *l.* for every Tenter not ſo numbred.

Juſtices to appoint Searchers.

The Juſtices at *Eaſter* Seſſions ſhall yearly chuſe ſo many Men within the ſaid Riding as they ſhall think reaſonable, to be Searchers for the Year enſuing, and may allow them a Salary not exceeding 15 *l. per Ann.* out of the Money in the Hands of the Treaſurer of the Riding; which Searchers, by Direction of a Juſtice, may enter in the Day-time (*Sundays* excepted) into any Mill-houſe, Shop, Tenter-Grounds, *&c.* to ſearch for Cloth over ſtretched, and may meaſure any Cloth they ſuſpect, or any Alteration of Seals; and if any Perſon ſhall reſiſt them, he forfeits 10 *l.* and if the Searcher ſhall diſcover any Frauds, the Owner of the Cloth ſhall forfeit 5 *l.*

Every Searcher muſt be ſworn to execute his Office to the beſt of his Skill; and if he act againſt his Oath he ſhall forfeit 20 *l.*

Searchers not to examine Cloth pack'd, &c.

But Searcher is not to examine any Cloth pack'd up for Exportation, unleſs by Warrant on Oath of Witneſſes that they ſuſpect ſome Fraud; and if no Fraud be found, then the Informer is to pay the Merchant 5 *s.* for each Cloth ſo unpack'd.

None who have not ſerv'd ſeven Years to exerciſe the Trade.

None who have not ſerv'd as an Apprentice for ſeven Years to the Trade, or have not exerciſed it (except Widows of Clothiers, and Perſons marrying ſuch Widows) ſhall make any Broad Cloths in the ſaid Weſt-Riding, on Forfeiture of 10 *l.* for every Month

None to uſe Cards of Iron Wire, &c.

No Perſon in dreſſing Cloth ſhall uſe Cards made with Wire of Iron, or other Metal, on Pain of 50 *l.* but

but Information must be given within 20 Days after the Offence discovered. And all Convictions for Offences (except such for which other Remedy is provided) shall be on Oath of one or more credible Witnesses, by one or more Justices, not being a Dealer in Woollen Cloth; and one Half of the Penalties to be to the Informer, and the other to the Poor of the Parish; and if not paid within ten Days after Conviction, and Notice thereof, or shall not appeal to the Quarter-Sessions, then the Justices are to issue out their Warrant to the Constable of the Town, or Bailiff of the Liberties, &c. to levy the same by Distress and Sale of Goods, rendring the Overplus; and for want of Distress, to commit him to the House of Correction, to be kept to hard Labour for six Months.

How Convictions must be.

Persons aggrieved may appeal to the Quarter-Sessions, giving ten Days Notice; and if Justices shall confirm or disannul Proceedings, they shall allow such Costs to Party grieved as they think reasonable to be levied, as is usual in Cases of Appeal, whose Order shall be final.

Appeal to Quarter-Sessions.

All Actions must be brought *in Com. Ebor.* and not elsewhere; and Persons sued may plead the General Issue, &c. and recover treble Costs.

Actions must be brought in Yorkshire.

This Act to be taken as a Publick Act, and to continue for seven Years; and from thence to the End of the then next Session of Parliament.

A Warrant to send a Weaver to the House of Correction, for returning his Work to the Clothier unfinish'd.

12 Geo. 1. *Whereas* A. B. *of*, &c. *Clothier, hath this Day made Information upon Oath before us* C. D. *and* E. F. *Esqs; two of his Majesty's Justices*, &c. *that* G. H. *Weaver, having twenty Pounds of Wool*, &c. *given unto him by the said* A. B. *for the making of Cloth on*, &c. *last, and agreed with the said* A. B. *to work and make the same into Cloth by*, &c. *did on*, &c. *before the said Day, return the said Wool and Work unmade into Cloth to the said* A. B. *to the great Damage and Disappointment of him the said* A. B. *and contrary to a Statute lately made: These are therefore to command you to apprehend the said* G. H. *to convey him to the House of Correction at*, &c. *and deliver him to the Keeper thereof, hereby also requiring you the said Keeper safely to keep the*

ſaid G. H. *in your Cuſtody for the Space of three Months, according to the Direction of the ſaid Statute.* Given, *&c.*

An Appointment of Inſpectors of Cloth made at the General Quarter-Seſſions of the Peace held at, *&c.* in the County of *Glouceſter*, the Day, *&c.*

13 Geo. 1. WE *whoſe Names are hereunto ſubſcribed and Seals affixed, Juſtices of the Peace for the County aforeſaid, aſſembled in the ſaid Seſſions, do by Virtue of a Statute lately made, chuſe, nominate and appoint* A. B. C. D. *and* E. F. &c. *to be Inſpectors of Cloth made within the Town and Diviſion of,* &c. *in the aforeſaid County, with full Power and Authority for them the ſaid* A. B. C. D. E. F. &c. *or any of them, at ſeaſonable Times, to enter into and inſpect every Mill, Shop, Out-houſe and Tenter-ground of every Mill-man, Clothier, and Maker of Cloth living within the ſaid Town and Diviſion, and to meaſure the Length of Tenters, and the Length and Breadth of all Cloth they ſhall find there, and affix their leaden Seals to the Head of every Cloth ſtamp'd with their Names; and alſo to keep a Regiſter of the Number and Length and Breadth of every Cloth, with the Owner and Mill-man's Name, delivering unto us, or ſome other His Majeſty's Juſtices of Peace in Quarter-Seſſions, a true Copy of ſuch Regiſter, and to do and execute all and every other Thing and Things appertaining to an Inſpector of Cloth, according to the Statute in that Caſe made, for and during the Term of one whole Year from the Date hereof; for the Performance of all which the ſaid* A. B. C. D. &c *have ſeverally taken an Oath before us, and are to have the Allowances and Salaries made by the Law for the ſame.* Given, *&c.*

A Warrant to puniſh an Imbeziller, and Detainer of Wool by Whipping.

7 Jac. 1. c. 7. Eſſex, ſſ. WHereas A. B. *Apprentice to* C. D. *of,* &c. *Clothier, hath this Day made Oath that* E. F. *of,* &c. *Weaver, hath unlawfully imbezilled, detain'd, or waſted the Yarn of the ſaid* C. D. *his Maſter, by him the ſaid* A. B. *deliver'd to the ſaid* E. F. *by Order of his ſaid Maſter, the ſaid* E. F. *having received Yarn ſufficient to make ten Yards of Cloth, according to the uſual Quantities of Yarn employ'd in the making of Cloth, and inſtead of making the ſaid ten Yards, hath made only five Yards*

Yards of Cloth, and refuſes to deliver, or account for the Remainder of the ſaid Yarn, contrary to an Act of Parliament in that Behalf made: And whereas the ſaid E. F. *having been examin'd before us, but not being able to clear himſelf from the ſaid Charge: Theſe are therefore in his Majeſty's Name to command you to put the ſaid* E. F. *in the common Stocks of your Pariſh, for the Space of,* &c. *And then that you do bind him to the common Whipping-poſt, and whip his naked Back until it ſhall be bloody, according to the Directions of the Acts of Parliament for puniſhing ſuch Offenders.* Given, *&c.*

Linen Cloth. See Linen.

Coaches and Chairs.

THE King may appoint five Commiſſioners, who may licenſe for 32 Years 800 Hackney Coaches, at 5 *s.* a Week to the King and his Heirs, to be paid monthly, and 200 Hackney Chairs at 10 *s. per Ann.* payable quarterly. 5 & 6 W. 3.

In *London* and *Weſtminſter*, or within ten Miles, no Hackney Coachman ſhall take for his Hire above 10 *s. per* Day, twelve Hours to the Day; and by the Hour, not above 18 *d.* for the firſt, and 12 *d.* for every Hour after; and none ſhall pay from any of the Inns of Court, or thereabouts, to any Part of St. *James's*, or *Weſtminſter*, (except beyond *Tuttle-Street*) above 12 *d.* and the ſame Prices from thoſe Places to the Inns of Court, or thereabout; and from any of the ſaid Inns, or thereabouts, to the *Royal Exchange*, 12 *d.* and to the *Tower*, or *Biſhopſgate-Street*, or *Aldgate*, or thereabouts, 18 *d.* and ſo from the ſaid Places to the ſaid Inns: And the like Rates from and to any Places at the like Diſtances. Rates of Coaches, &c.

And none are obliged to pay above 12 *d.* for the Uſe of any Hackney Coach for any Diſtance (not ſpecified in the Act) ſo as it exceed not one Mile and four Furlongs, nor above 18 *d.* for any Diſtance (not ſpecified) above one Mile and four Furlongs, and not exceeding two Miles.

The Commiſſioners, purſuant to this Act, have cauſed the ſeveral Diſtances between the moſt noted Places within the Weekly Bills, (not ſpecify'd in the Act) to be meaſured, and rated the ſame, *viz.*

From

1 s. Rates for Coaches.

From *Weſtminſter Hall* to *Marlborough-Street*, *Bolton-Street*, *Soho-Square*, *Bloomsbury-Square*, *Little Queen-Street*, *Holborn*.

From St. *James's Gate*, to *Queen Ann's Square*, *Weſtminſter*, the neareſt Corner of *Red-Lyon-Square*.

From *Golden Square* to *Red-Lyon-Square*.

From the *Hay-Market* Play-houſe to *Red-Lyon-Square*, *Bloomsbury-Square*, *Thavie's Inn*, *Queen Ann's Square Weſtminſter*.

From *Red-Lyon-Square* to *Guildhall*.

From the upper End of *Fetter-Lane*, *Holborn*, to *Aldgate*.

From the *Royal Exchange* to *Hoxton-Square*.

From *Newgate* to the Middle of *Greek Street*, near *Soho-Square*.

From the *King's Head* Tavern, *Southward*, to the Sign of Sir *William Walworth*.

From *Grey's Inn Gate* to *Sadler's Wells* by *Iſlington*.

From *Tom's Coffee-houſe* in *Ruſſel-Street*, *Covent-Garden*, to *New-Caſtle-houſe* near *Clerkenwell-Church*.

From *Temple-Bar* to *Billinſgate*.

From *Aldgate* to *Shadwell-Church*.

1 s. 6 d. Rates for Coaches

From *Drury-Lane* Play-houſe to *Queen Ann's Square*, *Weſtminſter*.

From *Weſtminſter Hall* to St. *Paul's Church* or *Queen-Square*, *Red-Lyon-Fields*.

From St. *James's Gate* to *Hatton-Garden*.

From the *New Exchange* in the *Strand*, to the *Royal Exchange*.

From the *Hay-Market* Play-houſe to *Hatton-Garden*.

From *Red Lyon-Square* to *Weſtminſter-Hall*.

From St. *James's* to *Marybone-Church*.

From the *Royal Exchange* to *Bloomsbury-Square*, or to the Watch-houſe at *Mile-End*

From the out-ſide of *Aldgate* to *Stepney Church*.

From *Bedford Street*, *Covent-Garden*, to *Coleman-Street*.

From *Bread-Street* to *Upper Moor-Fields*, and thence to *Hoxton-Square*.

From *Auſtin Fryars Gate* in *Broad-Street* to *Hart-Street* by *Bloomsbury-Market*.

From St. *Martin's Lane* in the *Strand* to *Gold Street* by *Wood Street*.

From the End of *Lombard Street* next *Grace Church-Street* to *Somerſet-houſe*.

1s. 6d. R. for Coaches.

From St. *Lawrence-Church* by *Guildhall* to *Brownlow-Street*, in *Drury-Lane*.
From the *Royal Exchange* to the Church at *Newington* beyond *Southwark*.
From *Tom's Coffee-House* by *Covent-Garden* to the *Royal Exchange*.
From *Stocks-Market* to *Charing-Cross*.
From *Aldgate* to *Ratcliff-Cross*.

And by the said Act, the Fare for a Hackney-Chair is 1*s.* for any Distance not exceeding a Mile, and 1*s.* 6*d.* for any Distance not exceeding a Mile and four Furlongs, which by the said Commissioners are thus appointed, *viz.*

1s. Rates for Chairs.

From *Westminster-Hall* to *Covent-Garden*, or to *Exeter-Change*.
From St. *James's Gate* thro' the Park to *Westminster-Hall*.
From St. *James's Gate* to *Somerset-House*.
From *Somerset-House* to the Upper End of *Hatton-Garden*.
From the Play-house at the *Hay-Market*, to *Bolton-Street*, *Essex-Street*, *Soho-Square*, the Entrance of *Lincoln's Inn Fields*.
From the neareſt Corner of *Golden-Square* to *Drury-Lane* Play-House.

1s. 6d. Rates for Chairs.

From *Westminster-Hall* to *Marlborough-Street*, *Soho-Square*, *Bolton-Street*, *Temple-Bar*.
From St. *James's Gate* to *Queen Anne's Square*, *Westminster*.
From *Golden Square* to *Red-Lion-Square*.
From *Red-Lion Square* to the *Hay Market* Play-House.
From *Queen's Square* to the said Play-House.
From the *Hay Market* Play-House to *Bloomsbury Square*, or *Grey's Inn*.

The Standings of Coaches.

The moſt noted Places for Standing of Hackney-Coaches are, *Palace-Yard*, *Westminster*, near *Westminster-Hall Gate*, near *Scotland-Yard*, *White-Hall*, *Charing-Cross*, St. *James's* Palace Gate, *Somerset-House*, *Russel-Street* and *Bedford-Street*, *Covent-Garden*, near St. *Clement's* Church in the *Strand*, *Temple-Bar*, St. *Dunstan's* Church *Fleet-Street*, near the Gates of the Inns of Courts, St. *Paul's* Church-yard, *Guild Hall*, *Stocks-Market*, the *Royal*

Royal Exchange, between *Biſhopſgate* and *Devonſhire-Street* End.

If the Commiſſioners licenſe above 800 Coaches, or 200 Chairs, they forfeit 100 *l.* Coachman driving without a Licenſe is 5 *l.* Forfeiture; and a Chair 40 *s.* Forfeiture; and Coach-Horſes muſt be 14 Hands high, *&c.* 9 *Ann. c.* 23.

The Commiſſioners may make Rules, Orders, and By-Laws, to be allowed by the Lord Chancellor, *&c.* and one Juſtice may puniſh, inflict, and put in Execution any the Forfeitures, Penalties, *&c.* and may determine Diſputes between Coachmen and others. Appeal to Quarter-Seſſions.

Forfeitures of Coachmen misbehaving.

Driver of a Coach for Hire, not being intereſted in it himſelf, forfeits 20 *s.* for demanding more than his Fare, or giving abuſive Language, or otherwiſe miſbehaving himſelf, or ſent to *Bridewell* for ſeven Days, by any one Juſtice of *London*, *Weſtminſter*, *Middleſex*, or *Surrey*, on Oath of one Witneſs.

Perſons refuſing to pay Coachmen, &c.

Perſons refuſing, or neglecting to pay Coachman, or Chairman, their due Fare, or wilfully cutting, defacing, or breaking any Coach, or Chair; on Complaint, a Juſtice of Peace is to grant his Warrant for the Offender to come before him, and on Conviction on Oath, to award Satisfaction, and on Refuſal to pay, *&c.* bind over to the next General Quarter-Seſſions.

If any Hackney Coachman, or Driver, ſhall refuſe to go at, or exact more for his Hire than by Statute 9 *Ann.* is limited, he forfeits a Sum at the Diſcretion of the Commiſſioners, not exceeding 3 *l.* nor under 10 *s.* and to be determin'd by three or more of them in a ſummary Way, by the Oath of one Witneſs. One Moiety to the Crown, the other to the Informer.

Commiſſioners may make By-Laws, &c.

Commiſſioners, or major Part of them, may make By-Laws, Orders, *&c.* not only to bind all Perſons licenſed to keep Hackney Coaches, *&c.* but the Renters of ſuch Licenſes, and Drivers of ſuch Coaches, and to annex ſuch Penalties as they ſhall think fit, not exceeding 3 *l.* nor leſs than 10 *s.* And no *Certiorari* ſhall ſuperſede Execution, or any Proceeding upon ſuch Orders.

None but licenſed Perſons ſhall ſtand, ply, or drive for Hire within the Weekly Bills, with any Coach, Hearſe, or Coach Horſes; or ſhall let to Hire any Mourning-Coach, or Coach-Horſes to attend on Funerals, on Forfeiture of 3 *l.* a Moiety to the Informer, and the other to the Crown. And

And whereas Undertakers of Funerals have hired Gentlemen's Coaches of their Servants, without the Conſent of their Maſters, to attend on Funerals, none but licenſed Coaches (except the Coaches of Gentlemen attending the Owner, or one of his Family) ſhall be driven to Funerals; and if any other are, then, upon Information to the Commiſſioners, they may ſummon the Driver, and he not appearing, or if he appear, and doth not prove the previous Order from the Owner, ſhall forfeit 5*l.* to be recover'd of the Driver or Undertaker; and 'tis 5*l.* Forfeiture for driving a Mourning-Coach, or Hearſe, without a Number fixed on Fore-Standard, *&c.* Alderman of every Ward, and Juſtice within his Juriſdiction in the Cities of, *&c.* have the ſame Power as Commiſſioners. No Carter, Drayman, or Waggoner, *&c.* ſhall ride on any ſuch Cart, *&c.* unleſs ſome Perſon be on Foot to guide the ſame, on Penalty of 10*s.* by Diſtreſs and Sale, *&c.* Conviction by Oath of one Witneſs. Penalty to Informer, and Poor, *&c.* on Default of Payment to be ſent to the Houſe of Correction for three Days. 1 *G. c.* 57.

No Mourning-Coaches to be hired, but what are licenſed.

No Drayman, Carman, &c. to ride on his Cart, &c.

By Order of Commiſſioners, Hackney-Coaches are to ſtand in the Middle of the Streets, and not againſt the Gates, nor in Streets not thirty Foot wide, or croſs any Street, or within eight Foot of Houſes, Walls, *&c.* on Pain of 10*s.* and the Drivers are to give Way to Perſons of Quality, and Gentlemen's Coaches, under the like Penalty of 10*s.*

Hackney-Coaches not having Tin-Plates with the Number of their Coaches, to forfeit 5*l.* Refuſing any Perſon to take the Number, or giving a wrong Number, to forfeit a Sum not exceeding 40*s.* By 10 *Ann.* Commiſſioners may licenſe 100 more Hackney Chairs, ſo that the Number do not exceed 300 at one Time: And by 12 *Ann.* the Widows of Chairmen who died poſſeſs'd, are to be preferr'd to all others, if they apply in a reaſonable Time.

And by an Act 12 *G.* 1. Commiſſioners for licenſing and regulating Hackney Coaches, have Power, under their Hands and Seals, to licenſe an additional Number of Hackney Chairs, not exceeding 100, which after the 14th of *June*, 1726, at any Time, during the Term of 18 Years from thence next enſuing, ſhall be kept for Hire within *London* or *Weſtminſter*, or the Weekly Bills; ſo that the Number of all the Licenſed Chairs ſhall not, at any one Time, exceed 400.

A War-

A Warrant againſt a Perſon for refuſing to pay a Hackney-Coachman his Fare, &c.

9 Ann. London, ſſ. WHereas Complaint hath been made unto me, by A. B. of, &c. Hackney-Coachman, that on, &c. of this Inſtant, &c. he the ſaid A. B. drove in his Hackney-Coach one C. D. of, &c. from the Royal Exchange to Temple-Bar, and on ſetting down the ſaid C. D. he the ſaid A. B. demanded his Fare of 1s. as ſettled by Act of Parliament, but the ſaid C. D. not only refuſed to pay the ſame, but beat and abuſed the ſaid A. B. very much, (or the ſaid A. B. found his Coach cut and defaced, &c.) Theſe are therefore to command you to apprehend the ſaid C. D. if he be within your Limits, and to bring him before me, or ſome other of His Majeſty's Juſtices of the Peace, to anſwer the Premiſſes, and to be proceeded againſt according to Law. Given, &c.

A Warrant to levy the Forfeiture of a Coachman, &c. for demanding more than his Fare, and misbehaving himſelf.

9 Ann. London, ſſ. WHereas A. B. of, &c. hath this Day made Information upon Oath before me T. B. Eſq; one of His Majeſty's Juſtices of the Peace within the Liberties of London and Weſtminſter, that on, &c. of this Inſtant, &c. he was drove in a Hackney-Coach by C. D. of, &c. from the Middle-Temple to the Royal Exchange, and being ſet down, he the ſaid C. D. demanded of the ſaid A. B. 2s. which is 1s. more than his juſt Fare, and gave the ſaid A. B. very abuſive and threatning Language, ſo that the ſaid A. B. was obliged for his Safety to pay the ſaid C. D. 1s. 6d. contrary to the Statute in that Caſe made and provided: Theſe are therefore to require you to demand of the ſaid C. D. the Sum of 10s. for the Uſe of the Poor of, &c. which I do hereby adjudge he hath forfeited for the Offence aforeſaid, by Virtue of the Acts of Parliament, and the Power given to Juſtices of Peace thereby; And if the ſaid C. D. ſhall refuſe to pay the ſame, that then you do convey him to the Houſe of Correction, there to remain for ſeven Days, and be kept at hard Labour, and receive the Correction of the Houſe. Given, &c.

Coals.

ALL Sorts of Sea-Coals brought into the *Thames*, and ſold, ſhall be ſold by the Chalder, containing 36 Buſhels heaped, and according to the Standard kept at *Guild-Hall*; and all other Coals commonly ſold by Weight, after 112 Pounds to the Hundred, on Pain of Forfeiture of all Coals otherwiſe ſold or expoſed to Sale by any Retailer, and the double Value thereof to be recover'd in any Court of Record, or by Complaint to the Lord Mayor of *London*, and Juſtices of the Peace within the City and Liberties, or any two Juſtices of the Peace, of the ſeveral Counties where ſuch Coals ſhall be expoſed to Sale; who upon due Proof upon Oath may convict the Offender, and by Warrant under their Hands and Seals, levy the Forfeitures, one Half to the Informer, the other to the Poor, or to the Repairing the Highways within the ſame Pariſh, or any adjoining Pariſh. 16 & 17 Car. 2. c. 2.

The Meaſures and Weight of Coals.

The ſaid Lord Mayor and Court of Aldermen of *London*, and Juſtices of Peace in their ſeveral Counties, or any three of them (*Quorum unus*) may ſet Rates or Prices upon ſuch Coals to be ſold by Retail, allowing a competent clear Profit to the Retailer.

Ld. Mayor, &c. may ſettle the Price of Coals.

If any Ingroſſer or Retailer refuſe to ſell as aforeſaid, they may appoint Officers, or other Perſons, to enter into any Wharf or Place where ſuch Coals are ſtored; and if refuſed, taking a Conſtable, force Entrance, and ſell the ſaid Coals at ſuch Rates, tendring the Money to the Ingroſſer or Retailer, neceſſary Charges deducted.

Provided no Perſon be ſued upon any other Act for the ſame Offence; and that to any Action upon this Act, the Defendant may plead the General Iſſue; and if the Plaintiff be Nonſuit, or a Verdict for the Defendant, the Defendant to have Damages and double Coſts.

No Perſon having Intereſt in any Wharf uſed for receiving or uttering Coals, or Trading by himſelf, or in any other's Name, ingroſſing or ſelling Coals, ſhall intermeddle in ſetting the Prices thereof. 16 & 17 *Car.* 2. *c.* 2. This Act was to continue but for 3 Years, and to the End of the next Seſſions of Parliament, but it was revived and continued by Stat. 2 *W.* & *M.* *c.* 7. and by Stat. 7 & 8 *W.* 3. made perpetual.

No Perſon having any Intereſt in any Wharf, &c. to be concern'd in ſettling the Price of Coals.

All

All Boats and Carts at Newcaſtle upon Tine, muſt be meaſured and marked.

All Keels, and other Boats, Carts, and Wains for Carriage of Coals at *Newcaſtle* upon *Tine*, ſhall be meaſured and marked by Commiſſioners appointed by the King for that Purpoſe; and if they carry any Coals before they are meaſured and marked, they are forfeited together with the Coals laden upon them. 30 *Car.* 2. *c.* 8.

Perſons having a Hand in removing, or altering the Marks of Keels, &c. forfeit 10*l.* by Diſtreſs and Sale, for want, to be committed for three Months without Bail, &c. Conviction by one Witneſs on Oath before one Juſtice. 6 & 7 *W.* 3. *c.* 10.

All Coals, when landed, muſt be carried in Linen Sacks ſealed and marked, &c.

By Stat. 3 *G.* 2. 'tis enacted, That all Coals landed at any Wharf, or other Landing Place, within the Cities or Suburbs of *London* and *Weſtminſter*, or Bills of Mortality, in any Cart or other Carriage whatſoever, ſhall be carried in Linen Sacks, ſealed and marked with white Paint in Oil, at *Guild hall*, *London*, or at the *Exchequer* Office at *Weſtminſter*, by the proper Officer there; which Sacks ſhall be full four Feet and two Inches in length, and ſix and twenty Inches in breadth; which all Dealers in Coals ſhall uſe for Carriage, and no others: And all Makers of Coal-Sacks ſhall make them of the ſaid Dimenſions; and every Dealer uſing any other Sacks, ſhall for every Sack forfeit 20*s.* But any Conſumer of Coals may carry home his Coals by Porters, or in his own, or hired Carts, without being obliged to uſe ſuch Sacks as before deſcribed.

All Sellers of Coals muſt uſe a lawful Buſhel, &c.

All Sellers of Coals by the Chaldron, or leſſer Quantity, ſhall conſtantly uſe a lawful Buſhel, as is deſcrib'd in Act 12 *Ann.* and ſhall put three Buſhels into each Sack, on Forfeiture of 50*l.* And if any Servant of ſuch Dealers in Coals ſhall fill them into Sacks, without duly meaſuring them by ſuch Buſhel, he ſhall be committed to the Houſe of Correction, to be kept to hard Labour, for any Time not exceeding 30 Days, nor leſs than 14 Days.

All Penalties under 5*l.* for Offences in this Act mentioned, ſhall be recovered by way of Complaint to the Lord Mayor, or any one Juſtice within *London*, or for the ſeveral Counties and Places where the Offender ſhall live, who are to call before them the Parties, and examine the Complaint on Oath, and to grant a Warrant for levying the Forfeiture; one Moiety to the Informer, and the other to the Poor of the Pariſh; and on Non-Payment it may be levied by Diſtreſs, rendring the Overplus; or the Offender ſhall be committed to the Houſe of Correction for any Time not exceeding

ceeding 30 Days, nor leſs than 14 Days, there to be kept to hard Labour.

By Stat. 4 G. 2. It ſhall not be lawful for any Owners of a Ship, or Veſſel imployed in the Coal Trade, or Perſons authorized by them, to give any Orders to their Agents, in Reference to their keeping of Turn in ſelling or delivering of Coals in the *Thames*, and no Perſon is to obey ſuch Orders, or keep Turn as aforeſaid, on Forfeiture of 100 *l.* for every ſuch Offence: Moiety to the King, Moiety to the Proſecutor, to be recover'd, with treble Coſts of Suit. Actions to be commenced within ſix Months after the Offence, and but one Imparlance allowed. No Perſon is to keep Turn in ſelling or delivering Coals.

Maſters of Coal Ships, or Perſons having Charge thereof, are to deliver to the proper Officer of the Cuſtoms at *London*, the Cocquet containing the Lading of their Ships, within four Days after their Arrival at *Graveſend*, on Forfeiture of 50 *l.*

This Act to be deemed a publick Act, *&c.*

A Warrant by two Juſtices to ſeize a Parcel of Coals ſold by Meaſure, or Weight, contrary to 16 & 17 *Car.* 2. *c.* 2. with the double Value thereof, and to deliver one Moiety to the Informer.

Middleſex, ſſ. FOraſmuch as it hath been duly proved unto us, that M. B. of your ſaid Pariſh, Ingroſſer (or Retailer) of Coals, did on the Day of, laſt paſt, ſell or expoſe to Sale, ten Chaldron of Sea-Coal, of the Value of, &c. contrary to the Form of the Statute made in the ſixteenth and ſeventeenth Years of the Reign of his late Majeſty King Charles the Second, intituled, An Act for Regulating the Meaſure and Price of Coals. And whereas the ſaid M. B. hath been this preſent Day convicted before us of the Offence aforeſaid, purſuant to the ſaid Statute: Theſe are therefore in His Majeſty's Name ſtrictly to charge and command you, and every of you, that you, ſome or one of you, do immediately upon Sight hereof, or as ſoon as conveniently you may after the Receipt of this our Precept, ſeize the ſaid ten Chaldron of Coals, and the double Value thereof, and forthwith deliver one full Moiety of the ſame unto G. Y. the Proſecutor in this behalf, to his own Uſe and Behoof; and likewiſe that you, or ſome or one of you, do diſpoſe of, and diſtribute the other Moiety thereof to the Church-

Wardens and Overſeers of the Poor of your ſaid Pariſh, to the Uſe of the poor People of the ſaid Pariſh, according to the Directions of the ſaid Act; whereof fail not at your Perils. Given, &c.

A Warrant againſt an Ingroſſer, or Retailer of Coals, for refuſing to obey an Order made by three Juſtices of Peace, of the County of *M* for regulating the Price of Coals according to the Statute.

Middlesex, ff. FOraſmuch as we *Sir* A. L. *Baronet*, C. R. *and* J. M. *Eſqrs. three of His Majeſty's Juſtices of the Peace for this County, whereof the ſaid Sir* A. L. *is of the* Quorum, *on the Day of laſt paſt, finding it reaſonable, meet and convenient, did thereupon (purſuant to a certain Act of Parliament made in the ſixteenth and ſeventeenth Years of the Reign of his late Majeſty King* Charles *the Second, intituled,* An Act for Regulating the Meaſure and Prices of Coals) *order, adjudge, and declare, That Sea-Coals coming from the Town of* Newcaſtle *upon* Tine, *and other Parts thereunto adjoining, into the River of* Thames *within this County, ſhould be ſold after the Rate and Price of thirty Shillings by the Chaldron: And whereas* G. M. *an Ingroſſer (or Retailer) of Sea-Coals, at his Wharf (or Ware-houſe) in* Milford-Lane *within your ſaid Pariſh, doth refuſe to ſell ſuch his Coals according to the Rate and Price aforeſaid; whereupon we have thought fit (according to the Authority given unto us by the ſaid Act) to authorize and appoint* W. H. *and* J. D. *of your ſaid Pariſh, by themſelves jointly, or ſeverally to enter into the Wharf (or Ware-houſe) of the aforeſaid* G. M. *in the ſaid Pariſh where his ſaid Coals are ſo ſtored up, as aforeſaid: And in caſe of Refuſal, or Reſiſtance by him the ſaid* G. M. *in permitting the ſaid* W. H. *and* J. D. *or either of them to do the ſame, that you the ſaid Conſtables, or ſome or one of you, do aſſiſt them the ſaid* W. H. *and* G. D. *to force Entrance thereunto, and ſeize upon the ſaid Coals, and ſell, or cauſe the ſame to be ſold at the Rate and Price aforeſaid; and after neceſſary Charges and Expences in and about the ſelling the ſaid Coals ſhall be deducted and defrayed, that then the ſaid* W. H. *and* J. D. *do return and pay unto him the ſaid* G. M. *all ſuch Monies as ſhall be ſo remaining in their Hands, upon the Sale of the ſaid Coals, as aforeſaid: And for your and every*

every of your ſo doing, this our Precept ſhall be your ſufficient Warrant. Given, *&c.*

Coffee, Tea, and Chocolate, &c.

THE Statute 10 *Geo.* 1. which takes off the Cuſtom Duties on Coffee, Tea, and Chocolate, lays certain inland Duties thereon, payable by the Druggiſts, and Dealers therein; and Entries are to be made in Writing of all Ware-houſes, Shops, and Places where made, *&c.* on Penalty of 200 *l.* and Forfeiture of the Goods, *&c.*

Entries of all Coffee, &c. are to be made.

Officers of the ſaid Duties, may in the Day-time enter ſuch Ware-houſes, Shops and Places, to weigh, gauge, and take Account of Coffee, *&c.* the Owner to aſſiſt therein, and to keep good Scales, Weights, *&c.* And Perſon hindring the Officer, or not aſſiſting, or not keeping ſuch Weights and Scales, forfeits 200 *l.*

Officers, on Suſpicion of Coffee, *&c.* conceal'd, *&c.* may (if within the Bills of Mortality) on Oath before the Commiſſioners of the Duties (or if in other Places before one Juſtice, by their Special Warrant by Day or (with a Conſtable, *&c.* by Night) enter ſuſpected Places, and ſeize and carry away ſuch concealed Coffee, *&c.* and Perſon obſtructing or hindring the Officer, *&c.* in entring or ſeizing, forfeits 100 *l.* *Stat.* 10 *Geo.* 1. *c.* 10.

Officers may enter and ſeize.

By *Stat.* 4 *Geo.* 2. any Officer of Exciſe or Cuſtoms, may ſeize any Quantity of Starch or Hair-powder, with the Horſes and Package that ſhall be found in any Veſſel, or ſhall be carrying in any Cart or Waggon where they ſhall have good Reaſon to ſuſpect it has been made in any private Ware-houſe, or clandeſtinly imported, or that the ſame Starch or Hair-powder hath been exported or landed again after the Duty has been repaid at the Exportation; and after ſuch Seizure, the Officer is, within 10 Days, to exhibit an Information before three or more of the Commiſſioners of Exciſe, or two or more Juſtices of Peace near the Place: And if the Party, in whoſe Poſſeſſion ſuch Starch or Hair-powder hath been found, does not make it appear that the Duty has been paid, the Starch and Hair-powder ſo ſeized ſhall be forfeited, with the Horſes and Package, and the Perſon in whoſe Poſſeſſion found ſhall forfeit 5 *l.* for every Hundred

And alſo Starch, &c.

Weight, and the Commiſſioners or Juſtices ſhall proceed to Judgment.

If any Officer of Exciſe or Cuſtoms ſhall have Cauſe to ſuſpect that Starch is privately making, or that any Starch is concealed, then on Oath before the Commiſſioners, or any one Juſtice near the Place, ſetting forth the Grounds of his Suſpicion, they may by Special Warrant impower ſuch Officer, by Day or by Night (but if by Night, then in the Preſence of an Officer of the Peace) to enter into all Places where they ſhall ſuſpect Starch is privately making, lodged, or concealed, to ſeize the Starch, with all the Materials as forfeited, and the Party ſhall forfeit 50 *l.*

None to counterfeit Tea, &c.

If any Dealer in Tea ſhall manufacture any Sloe Leaves, Liquoriſh Leaves, or Leaves of Tea that have been uſed, or any other Leaves in Imitation of Tea, ſhall mix or dye ſuch Leaves or Tea with *Terra japonica*, Moloſſes, Clay, Logwood, or with any other Ingredients whatſoever, or ſhall ſell or expoſe to Sale, or ſhall have in his Cuſtody any ſuch Leaves in Imitation of Tea, he ſhall forfeit for every Pound of ſuch Tea 10 *l.*

All Penalties and Forfeitures for any Offence againſt this Act ſhall be ſued for, recovered and mitigated as any Penalty againſt the Laws of Exciſe, or by Action of Debt, Bill, &c. in any of the Courts of Record at *Weſtminſter*; and one Moiety ſhall be to the King, and the other to the Informer. *Stat.* 4 G. 2.

Common Prayer.

THE Acts of Parliament ſettling and enjoyning the Uſe of the Common Prayer are, the 2 & 3 *Ed.* 6. *c.* 1. 5 & 6 *Ed.* 6. *c.* 1. 1 *Eliz. c.* 2. and 13 & 14 *Car.* 2. *c.* 4.

On theſe Statutes are to be obſerved:

1. The Puniſhment of a Miniſter for refuſing to uſe, or depraving the Book of Common Prayer.
2. The Puniſhment of any other Perſon depraving it, and of ſuch who ſhall hear, or be preſent at any other Form.
3. Who are bound to uſe it, and aſſent to it.
4. Who muſt provide it.

First,

First, A Miniſter convicted by Verdict, Confeſſion, or notorious Evidence of the Fact of refuſing to uſe it, or uſing any other Form, or depraving it. Puniſhment of Miniſter depraving, or not uſing the Common Prayer.

If Beneficed. For the firſt Offence, by 2 & 3 *Ed.* 6. he forfeits to the King which of his Benefices the King will chooſe. But *per* Stat. 1 *Eliz. c.* 2. loſes his Spiritual Livings for a Year, and by both Impriſonment for ſix Months by the firſt Statute, without Bail; and by the other indefinitely.

For the ſecond Offence Deprivation and Impriſonment for a Year, by both Statutes.

For the third Offence, Impriſonment for Life by the Statute of *Ed.* 6. and Deprivation and Impriſonment for Life, by the ſaid Statute of *Eliz.*

If not Beneficed. First Offence for ſix Months. But by the Statute of 1 *Eliz. cap.* 2. Impriſonment for Twelve Months.

Second Offence, Impriſonment for Life.

Secondly, if any Perſon ſhall be convicted, (as aforeſaid) by Songs, or otherwiſe to have depraved it, or to procure a Miniſter to ſay any other Form, or have interrupted him to ſay the Service. Of any other Perſon ſo doing.

First Offence, *per* Stat. 2 & 3 *Ed.* 6. forfeits Ten Pounds to the King; and if not paid within ſix Weeks after Conviction, then Impriſonment for three Months inſtead thereof: But by the Stat. 1 *Eliz.* forfeits 100 Marks to the Queen; and if not paid (*ut ſupra*) ſhall inſtead thereof be impriſoned for a Year. 1ſt Offence.

Second Offence, *per* Stat. *Ed.* 6. forfeits Twenty Pounds to the King; and if not paid (*ut ſupra*) Impriſonment for ſix Months without Bail. But *per* Stat. 1 *Eliz.* forfeits 400 Marks to the Queen; and if not paid (*ut ſupra*) Impriſonment for a Year. 2d Offence.

Third Offence, forfeits all his Goods and Chattels, and Impriſonment during Life. 3d Offence.

Any Perſon convicted at the Aſſizes, or Seſſions, to have wittingly heard, or to have been preſent at any

other Form of Common Prayer, than what is expreſſed in the Statute of 2 & 3 *Ed.* 6.

Firſt Offence, Impriſonment for ſix Months without Bail.

Second Offence, Impriſonment for Twelve Months.

Third Offence, Impriſonment for Life. 5 & 6 *Ed.* 6. *c.* 1.

Juſtices of Oyer and Terminer, of Aſſize, and Mayors, and Head-Officers of Corporations, have Power to hear and determine Offences againſt the Statute of 2 & 3 *Ed.* 6. The Proſecution muſt be at the next Aſſizes after the Offence committed. But *per* Stat. 23 *Eliz. c.* 1. Juſtices in Seſſions have the like Power. (But for any Offence againſt 1 *Eliz. c.* 2. only, no Man is to be queſtion'd after one General Seſſions next after the Offence done is paſt.) But Proſecution on 23 *Eliz. c.* 1. muſt be within a Year and a Day after the Offence.

No Form of Prayer ſhall be uſed in any publick Place, other than according to the ſaid Book.

Third, Who are bound to uſe it, and aſſent to it.

Parſons muſt read it once a Month.

Incumbent on a Benefice with Cure, reſiding on his Living (though he keeps a Curate) and not having a lawful Impediment to be allowed by the Ordinary, muſt himſelf once a Month read it, as by the ſaid Book is appointed, or for every Offence forfeits five Pounds to the Uſe of the Poor. Conviction muſt be before two Juſtices, by his own Confeſſion, or Oath of two Witneſſes. 13 & 14 *Car.* 2. *c.* 4.

If the five Pounds is not paid within Ten Days after Conviction, then the Church-wardens and Overſeers of the Poor may, by a Warrant from two Juſtices, levy it by Diſtreſs and Sale of Goods. *ibid.*

What Lecturers, Preachers, or Readers muſt do.

No Perſon ſhall be a Lecturer, Preacher, or Reader, with a Licenſe from the Ordinary, but muſt read the 39 Articles, and declare his Aſſent thereunto, and muſt read the Service the firſt time he Preaches, and declare his Aſſent to it; and upon the firſt Lecture-Day of every Month muſt read the Service, and declare his Aſſent as *per* Stat. 13 & 14 *Car.* 2. and if he refuſe, he is diſabled to preach 'till he conform. But at Sermons and Lectures in Cathedrals and Colleges, 'tis ſufficient if a Lecturer declare his Aſſent to all Things in the ſaid Book.

If any Perſon ſhall Preach, being diſabled (*ut ſupra*) before he conforms, two Juſtices, upon Certificate

cate from the Ordinary, may commit him for three Months.

A Man was convicted for Adminiſtring the Sacrament of Baptiſm in another Form than preſcribed by the Book of Common Prayer. He was indicted the ſecond time for the like Offence, and had Judgment to be impriſon'd for a Year, and to be deprived, *ipſo facto*, of all his Spiritual Promotions; and upon a Writ of Error brought, this laſt Judgment was reverſed, becauſe the firſt Conviction was not ſet forth in the ſecond Indictment; for otherwiſe the ſecond Conviction doth not warrant ſuch a Judgment. *Godb.* 118. Caſes on ſaid Acts.

Fourthly, The Church-wardens muſt provide one in every Pariſh Church, at the Charge of the Pariſhioners. *per* 13 & 14 *Car.* 2. *c.* 4.

In Term' Trin. 33 *Car.* 2. *B. R.* it was reſolved, that the Stat. 1 *Mar'* extends to the Divine Service now eſtabliſhed, and that the Word *ſuch* ſhall not be referred to the Quality of the Service, but to the Authority eſtabliſhing it. 2 *Jones's* Rep. 159. *Paul Moon's* Caſe.

One was indicted at the Quarter-Seſſions for uſing other Prayers in the Church, and in another Manner than mentioned in the Book of Common Prayer, and concluded *contra formam Statuti*; he was found Guilty, and fined 100 Marks; and upon a Writ of Error it was argued for the Plaintiff in Error, that this Indictment was not warranted by any Law: But if this ſhould not be allowed, the Juſtices of Peace have not Power in their Seſſions to enquire into this Matter; or if they had Power, they cou'd not give ſuch a Judgment, becauſe the Puniſhment is directed by the Statute, and of this Opinion was the whole Court, *viz.* That Offences againſt that Statute are inquirable by the Juſtices of Peace.

The Indictment ought to have alledged, that the ſaid *S.* uſed other Forms and Prayers, inſtead of thoſe enjoined, which were neglected by him; for otherwiſe every Parſon may be indicted who uſeth Prayers before his Sermon other than ſuch which are required by the Book of Common Prayer. *Paſch.* 1 *Ja.* 2 *B. R.* 3 *Mod. Rep.* 78, 79, *Rex* ver. *Sparks.*

A Warrant againſt an Incumbent for not reading the Service once a Month.

Eſſex, ſſ. *WHereas* W. N. *Incumbent on the Beneſice of* L. *with Cure in the ſaid County, and reſiding on his ſaid Living, and having no lawful Impediment allowed by his Ordinary, hath on the third Day of this Inſtant* July, *been lawfully convicted before us,* R. B. *and* W. N. *two of His Majeſty's Juſtices of the Peace for the ſaid County, for that he the ſaid* W. N. *did not in a Month laſt paſt publickly read the Common Prayers in the ſaid Pariſh-Church of* L. *in ſuch Manner and Form as in and by the Book, intitled,* A Book of Common Prayer, *&c. is appointed, and according as 'tis enjoined by the Statute in that Caſe made and provided, by reaſon whereof, and by Virtue of the ſaid Statute, he the ſaid* W. N. *hath forfeited* 5 l. *to the Uſe of the Poor of the ſaid Pariſh: Theſe are therefore to Require you, or ſome of you, to ask and demand the ſaid* 5 l. *of the aforeſaid* W. N. *and if the ſame ſhall not be paid to you, or ſome of you, within ten Days after ſuch Demand, and Conviction aforeſaid, then to levy the ſame by Diſtreſs and Sale of the Goods of the ſaid* W. N. *rendring to him the Overplus; and hereof fail not.* Given, *&c.*

A Commitment of a Lecturer, *&c.* for Preaching, being diſabled, *&c.* by the Statute of 13 & 14 *Car.* 2. *c.* 4.

Eſſex, ſſ. *WHereas upon a Certificate from the Ordinary of the Dioceſe of* L. *directed to us* A. B. *and* C. D. *two of His Majeſty's,* &c. *it doth appear to us, that* J. S. *therein named, being Lecturer of the Church of* H. *in the ſaid County, hath preached there without a Licenſe by him had or obtained from his ſaid Ordinary, and hath not read the* 39 *Articles in his Preſence, nor declared his Aſſent thereunto; and hath not upon the firſt Lecture-Day of every Month, ſince he hath been Lecturer there, read the Service appointed for that Day, and declared his Aſſent thereunto, purſuant to the Statute in that Caſe made and provided, by reaſon whereof, and by Virtue of the ſaid Statute, the ſaid* J. S. *is diſabled to preach until he conform to the ſaid Law: And whereas it doth likewiſe appear unto us, That the ſaid* J. S. *after ſuch Diſability incurred as aforeſaid, and before his Conformity, that is to ſay, on the third Day of this*

this Inſtant June, *hath preached in the Pariſh-Church of* H. *aforeſaid, contrary to the Form of the ſaid Statute: Theſe are therefore in His Majeſty's Name to require you to apprehend the aforeſaid* J. S. *and to convey him to the common Gaol of the ſaid County, and to deliver him ſafely to the Keeper of the ſaid Gaol, together with this Precept; hereby alſo commanding you the ſaid Keeper, to receive the ſaid* J. S. *into your Cuſtody, and him ſafely there to keep for the Space of three Months next enſuing the Date hereof.* Given, *&c.*

Conies. See Game and Hunting.
Conjuration. See Felony.

Conſpiracy.

IF any Butchers, Brewers, Bakers, Poulterers, Cooks, Coſtermongers, or Fruiterers, ſhall conſpire, covenant, *&c.* not to ſell but at certain Prices; or if Artificers, Workmen, or Labourers, conſpire, covenant, or promiſe that they will not do their Work but at certain Prices or Rates, or ſhall not work but at certain Hours or Times; or ſhall not take on them to finiſh what another hath begun; or ſhall do but certain Work in a Day, ſuch Perſon convicted by Witneſs, Confeſſion, or otherwiſe, ſhall forfeit 10*l.* to the King; and if not paid in ſix Days after Conviction, ſhall be impriſon'd for twenty Days with only Bread and Water; and for the ſecond Offence forfeit twenty Pounds, and ſhall pay it within ſix Days, or elſe have the Pillory; and for the third Offence forfeit forty Pounds; and if not paid in ſix Days, ſhall be ſet in the Pillory, and have one of his Ears cut off, and be infamous.

Where Butchers, Bakers, &c. conſpire to ſell at certain Prices.

And if ſuch Conſpiracy be made in a Society, Company of any Craft, Myſtery, or Occupation abovemention'd, by the more Part of them, then over and beſides the particular Puniſhment above mention'd, the Corporation ſhall be diſſolved. Juſtices of Peace, may hear and determine the Offences, and puniſh the Offenders. 2 *Edw.* 6. *c.* 25. revived by Statute 22, 23 *Car.* 2.

But beſides this, there is another Sort of Conſpiracy, which is, where two or more agree falſly and maliciouſly to indict an innocent Man, who after he is acquitted by Verdict, hath two Remedies to puniſh the Offenders. (1.) By

Moor 562, 788, 815, 816. Where two or more conſpire to indict an innocent Man, &c.

(1.) By a Writ of Conſpiracy, which is a Civil Action, in which Damages are to be recover'd.

Caſes of Conſpiracy.

(2.) By Indictment, at the Suit of the King.

But the Action will not lye, unleſs the Party is *legitimo modo acquietatus.* Noy 116.

There is a nice Caſe in Conſpiracy, &c. for that they falſly procured him to be indicted and impriſon'd *quouſq;* before ſuch Judges *legitimo modo fuit acquietatus,* and did not ſay, *inde acquietatus.* 2 Cro. 230. Yelverton 161.

To ſupport this Action, the Conſpiracy muſt be proved to be, 1. Malicious. 2. Falſe. 3. Declared by ſome Proſecution. 4. Voluntary.

A falſe Confederacy to indict another, is puniſhable by Indictment, tho' nothing is put in Ure. *Roll's Abridgm.* 2. Part. 1 *Lev.* 62.

Information was brought by one *Miller*, againſt an Attorney and another, for Conſpiracy to take away his Life, by indicting him at the Aſſizes for Felony; which was found *Ignoramus.* The Conſpiracy was proved, and the Judgment was, That the Attorney ſhould be degraded, and caſt over the Bar, that both ſhould loſe their Ears, and be marked in the Face with the Letter C, to ſtand on the Pillory, with Papers of their Offences; to be whipped, and each fined 500 *l.* And this Sentence was moſt juſtly executed on them. 12 *Ja.* 1. *Godbolt*, 205.

So where Sir *James Creighton* articled with *Cantrel* to get Sir *Anthony Aſhley* indicted for Murder, and then *Creighton* was to beg his Eſtate of the King, and *Cantrel* was to have one ſixth Part of it; whereupon *Cantrel* procured one *Smith*, who was Servant to Sir *Anthony*, to cauſe his Maſter and himſelf to be indicted for Poiſoning one *Rice*, but afterward diſcover'd the Conſpiracy, and *Creighton* was fined 1000 *l.* and committed; another of the Defendants was fined 300 *l.* and to ſtand in the Pillory, and was burnt with a hot Iron on both Cheeks, with the Letters F and C. *See an Indictment in Conſpiracy.* Co. Entr. 173.

Conſtables.

4 Inſt. 123.

BEing to treat of the Office, and not of the Name of a Conſtable, 'tis not material to enquire from whence the Name is derived.

It

It is certain the Kingdom is now divided into Shires, and the Shires into Hundreds, tho' the Time when this Diviſion began be uncertain; the common Opinion is, that it was in the Reign of King *Alfred*; but Mr. *Selden* tells us it was before that Time.

High Conſtables are now appointed over each Hundred to preſerve the Peace, and Petty Conſtables are appointed for that Purpoſe in each Town, Village, and Pariſh of every Hundred, to be aſſiſting to the High Conſtables.

High Conſtables are over Hundreds, Petty Conſtables for Pariſhes, &c.

It ſeems to me that both High and Petty Conſtables are Officers at Common Law, and that the one was long before the Statute of *Winton*, and the other before the Beginning of the Reign of *Edw.* 3. ſo that ſuch old Statutes which firſt mention this Officer, do only recite the Common Law.

A Conſtable was indicted for not returning a Warrant to him directed about Deer-ſtealing, tho' he is not named in the Statute 3 & 4 *W.* & *M. c.* 10. which being removed into *B. R.* by *Certiorari*, it was reſolved, That Conſtables are ſubordinate Officers to Juſtices, &c. and that where an Officer neglects his Duty, he is indictable for it at Common Law; and in this Caſe he ought to return his Warrant, or certify what he has done upon it; otherwiſe the Proſecutor cannot have the Effect of his Proſecution; and that though this Indictment concluded *contra pacem*, that did not hurt, becauſe this was only a *Non-feazance*.

Conſtable muſt return his Warrant, &c.

Two Juſtices (*Quorum unus*) may appoint High Conſtables in *Wales*, by Stat. 34 *H.* 8. *c.* 26.

But here in *England* they may be choſe at the Leet, either by the Steward himſelf, or by Preſentment of the Grand Jury there; but this muſt be warranted by Cuſtom, and where a Court-Leet is uſually kept; and in ſuch Caſe the Juſtices of the Peace cannot interpoſe.

High Conſtable to be choſen at the Leet.

If he is preſent when choſe, and does refuſe the Office, the Steward may fine him; if abſent, the Homage may preſent his Refuſal at the next Court, and then he ſhall be amerced. Alſo, if he is preſent, and accept the Office, he may be ſworn in the Leet; if abſent, upon Notice given by the Steward, muſt take the Oath before a Juſtice; but you cannot diſtrain for the Penalty without a Cuſtom.

Where Neglects or Miſcarriages are either in keeping ſuch Courts, or chuſing them, the Juſtices at their Quarter-Seſſions, or the major Part of them, may appoint and ſwear a High Conſtable; and this the uſual Courſe

If neglected there, then at Quarter-Seſſions.

Courſe at this Time; but in Caſe of Refuſal, Death, or the Removal, one Juſtice of the Peace may chuſe and ſwear another. 11 *Car.* 1. *B. R. Trin. Ter.* 34 *Car.* 2. *Jones's Rep.* 212.

'Tis true, they may be ſworn at any other Time, by a Warrant from the Seſſions, and they may alſo be choſen out of the Seſſions, by the greater Number of Juſtices of a Diviſion; but this is not ſo uſual.

'Tis ſaid the Seſſions can appoint a Conſtable where none before. *Black.* 87.

Petty Conſtables, and Tithing-men, are elected by the Pariſh, and ſworn in their Offices in the Court-Leet, and ſometimes by Juſtices of Peace in the Seſſions.

The Manner of chuſing Conſtables in London, &c.

But there is ſome Variation in the Manner of Election, and the Oath and Office of Conſtables in the City of *London*, with reſpect to other Conſtables appointed in the Country.

For the City is divided into Twenty-ſix Wards, and every Ward into the like Number of Precincts, over each of which is a proper Conſtable; and all Conſtables muſt be Freemen of the City.

They are nominated by the Inhabitants of the Precinct on St. *Thomas's* Day, and confirm'd, or otherwiſe at the Wardmoot-Inqueſt; and after they are confirm'd, they are ſworn in their Offices at a Court of Aldermen on the next *Monday* after *Twelfth-Day*. Calt. Rep. 129.

Such as are choſen and admitted to the Office of Conſtable in *London*, are obliged to put the King's Arms, and the Arms of the City over their Door; or (if he live in an Alley) at the End of the Alley towards the Street, to ſignify that a Conſtable lives there. *Note*; That a Conſtable of *London* hath Power to ſerve Warrants, and execute his Office, if required, throughout the whole City.

As for being qualified for this Office, they ought to be honeſt, underſtanding, and able Men, and to be Men of Subſtance, and not of the meaner Sort, and reſident where choſen; and if they are not duly qualified, two Juſtices, upon Complaint, may remove them, and appoint others. And tho' formerly it was not, yet now 'tis held, That a Cuſtom for every Inhabitant to ſerve by Turns, is good; for if it happen on a Woman, ſhe may hire one to ſerve. *Sid.* 355.

Diſſenters choſen Conſtables may make Deputies for the Execution of the Office, by 1 *W.* & *M.* and other

Perſons may make Deputies, though formerly it was doubted, but they muſt anſwer for their Miſcarriages, unleſs ſuch Deputies are ſworn and allowed by the Court. *Moor* 845. 3 *Bulſt.* 77. 1 *Rolls* 274.

Juſtices of Peace, Clergymen, Attornies, Infants, Lawyers, the King's Servants in Ordinary, Madmen, Phyſicians, Ideots, poor, old, and ſick Perſons, are exempted from Serving. *Cro. Car.* 389. *Noy* 112, 113.

But Tenants in ancient Demeſne are not. 1 *Vent.* 344. *Mich.* 21 *Car.* 2.

Where a Conſtable choſe refuſes to ſerve, &c.

If a Conſtable, after he is duly choſe, refuſe to ſerve, Juſtices may bind him over to the Aſſizes, or Seſſions, and there he may be indicted and fined; but you muſt alledge the Place where he was required to take the Oath, and before whom he refuſed to be ſworn, and not *ad Seſſionem* generally; otherwiſe it may be quaſh'd. *Styl.* 124. 1 *Keeble* 418. 1 *Mod.* 24, 13. *Allen* 78. 2 *Roll. Rep.* 78. 2 *Saunders* 291. *Sid.* 272. *Style* 394.

Actions againſt a Conſtable muſt be laid in the proper County.

Actions brought againſt him for any Thing done in the Execution of his Office, muſt be laid in the proper County where the Fact is ſuppoſed to be done, and he may plead the General Iſſue, and give the Special Matter in Evidence; and if the Plaintiff is Nonſuit, or diſcontinue, or a Verdict for the Defendant, he ſhall have double Coſts. 7 *Jac.* 1. *c.* 5. 21 *Jac. c.* 12.

If a Conſtable die, or move out of a Pariſh, two Juſtices may chuſe and ſwear another; and he is to continue in the Office 'till next Leet or Seſſions, and the Steward or Juſtices may either approve him, or appoint another, and ſwear him. This Office is to continue for one Year; and if longer, Juſtices in their Seſſions may diſcharge him.

The Seſſions may remove a High Conſtable as well as a Petit Conſtable, for they are the beſt Judges in theſe Caſes.

If any one abuſe or affront a Conſtable in the Execution of his Office, either by Word or Action, he may have him bound to the Good Behaviour for ſuch his Offence, and fined before the Juſtices in their Seſſions, as they ſee fit upon Proof. *Fitz.* 207. *Crompt.* 135.

Note; A Man is to ſerve the Office of Conſtable in reſpect of his perſonal Abode, and not in Reſpect of his Lands.

Where there is a Conſtable, Tything-men, &c. are not principally to concern themſelves.

Tything men, Borſholders, Thirdboroughs, Borough-heads, Chief Pledges, Headboroughs, &c. appointed in a Town or Pariſh having alſo a Conſtable, cannot principally concern themſelves in any Matter,

ter, the Conſtables being Head-Officers, tho' in the Abſence of the Conſtable, they are chiefly to attend the Service: And there are many Things which a Conſtable has Power to do, that Headboroughs and Tything-men cannot intermeddle with. *Dalt. cap.* 1. *f.* 34.

But where there is no Conſtable, they act as Conſtables.

But in Towns and Pariſhes where there are no Conſtables, and that the only Officers for the Peace there are Headboroughs, Thirdboroughs, Borſholders, or ſuch other, in ſuch Caſes their Power and Authority is declared to be equal with the Conſtable, in all ſuch Things, and their Office is in a manner all one; and divers Statutes do appoint Offenders to be puniſhed by the Conſtable, or other inferior Officers, which muſt needs be the Tithing-men, *&c.*

What High Conſtables may do.

High Conſtables, on their receiving Monies from Church-wardens, aſſeſs'd on any Pariſh for Relief of poor Priſoners, are to pay over the ſame to the Collectors appointed by the Juſtices at the Quarter-Seſſions, on the Penalty of 5 *l. Stat.* 14 *Eliz. c.* 5.

They are alſo to pay over Monies received for the Relief of poor Priſoners in the *King's Bench*, and *Marſhalſea*, under the Penalty of 20 *s.* And ſo of Money received for the Relief of maimed Soldiers and Mariners, on Pain of 40 *s. Stat.* 43 *Eliz. c.* 3.

They are likewiſe to pay Monies rated at *Eaſter* Seſſions for the Uſe of the Poor, to the Treaſurers, under the Penalty of 20 *s.* by *Stat.* 43 *Eliz. c.* 2.

They are to pay Petty Conſtables the Allowances aſcertained in Certificates made by Juſtices for paſſing of Vagrants, and no more, taking the Certificates and their Receipts, which Certificates and Receipts are to be allow'd the chief Conſtable in his Account by the Treaſurer of the County. *Stat.* 12 *Ann. c.* 23.

High Conſtables paying Money for paſſing Vagrants, without the Petty Conſtables producing a Receipt for ſuch Vagrants, to forfeit 20 *s. Stat.* 12 *Ann. c.* 23.

High Conſtables are to iſſue Precepts to Petty Conſtables, to prepare Liſts of Jurors, make Preſentments of Offences, and levy Gaol Money, *&c.*

A Perſon diſobeying the Order of Juſtices for taking the Office of Conſtable upon him, was commited to Gaol by the Juſtices at the Seſſions; the Perſon diſobeying alledg'd, that he was not within the Liberty; and it was adjudg'd, that the Commitment was wrong, for he ought to have been indicted upon his Refuſal; and if he was found to be within the Liberty, they might then aſſeſs a Fine, and commit him 'till Payment.

ment. *Cro. Cr.* 566. *Hill.* 15 *Car.* 1. *B. R. Crawley's* Caſe.

Where a Leet is orderly kept, and there is a due Election of this Officer from Time to Time, and no Neglect or Miſcarriage therein, there the Juſtices are not in, or out of their Seſſions to meddle with the Choice or Removal of a Conſtable; and if they ſhould intermeddle in this Caſe, or remove a Conſtable ſettled by the Leet, according to the Cuſtom of the Place, the Leet may put him in again, and the *K. B.* muſt decide the Difference. *Trin.* 9 *Jac.* 1. *B. R. Style's Rep.* 362. 1 *Bulſt.* 174. But it is agreed, That where there is a Neglect or Miſcarriage in a Court-Leet, touching the making a Conſtable, there the Seſſions may interpoſe and ſupply it. The Lord alſo may loſe his Leet by this Neglect. *Style* 71. *Mich.* 22 *Car. B. R.* And the Juſtices alſo are to make the High Conſtables of Hundreds, where there is not a Leet for the Hundred that hath conſtantly done it. *Trin.* 9 *Jac.* 1. *B. R.*

Where a Leet is orderly kept, there the Seſſions has nothing to do to chuſe Conſtables.

But where there is a Neglect, there the Seſſions may interpoſe.

Conſtables, or other Officers, may lay no Hands on Two intending to fight, 'till Weapons are drawn, or an Aſſault made. *Lamb.* 132.

Conſtable hurt in parting an Affray, may have an Action againſt the Affrayer; ſo may any other Officer; but the Affrayer can have none againſt them. *Lamb. ibid.*

Conſtable or Officer preſented at Seſſions for not indeavouring to part an Affray, being preſent, ſhall be heavily fined. *Lamb. ibid.*

Conſtables may make their Deputies within the *Stat.* 7 *Jac.* 1. *Felp's* Caſe. *Mich.* 13 *Jac.* 1. *B. R. Phillips* con. *Winchcomb. Moore p.* 845. 3 *Bulſtrode* 77.

Conſtables may make Deputies within 7 Jac. 1.

A Conſtable was bound to his Good Behaviour for arreſting one on a *Sunday* in the Church-yard, after a *Certiorari* out of the *K. B. Shewn.* 1 *Cr.* 603.

A Conſtable upon a General Warrant, may carry an Offender to any Juſtice; otherwiſe it is if the Warrant be Special. 1 *Co.* 5. *Rep. f.* 59. *Foſter's* Caſe.

Antiently both High Conſtables and Petty Conſtables were appointed and ſworn by the Sheriff in his Turn; and if a Conſtable died, his Place was to be ſupplied by the Leet, or Juſtices of Peace.

But now by the Stat. of 14 *Car.* 2. *c.* 12. in Caſe of the Death of Conſtables, or their Removal out of the Pariſh, two Juſtices of the Peace may ſwear new ones, they to continue until the next Leet, or until the Seſſions, where the ſame ſhall be either approved, or others

In Caſe of Death, or Removal of a Conſtable, two Juſtices may ſwear another.

others appointed; and if for want of a Leet, they hold over a Year, they must be discharged, and others put in their Places. By the same Statute, Constables, &c. being out of Purse, may make Rates upon the Occupiers of Lands, Inhabitants, and others chargeable, which being confirmed by the Justices, may be levied by Distress, by the Warrants of two Justices, &c.

A Constable was indicted for refusing to pursue Hue and Cry for a Burglary. *Cro. Eliz.* 654. *Crowder's* Case.

A Constable is an Officer of the Quarter-Sessions, and is bound to obey their Orders. *Black.* 86.

By 22 *Car.* 2. *c.* 8. Constable is to search if any one use any Measures but *Winchester*; and if he finds any unsealed Measure, to break the same.

A Constable hath no Authority to commit any Person to Prison, before he carries him before a Justice of Peace, unless for Breach of the Peace done in his Presence. *Savil* 98.

A Constable may be indicted for disobeying a Justice of Peace his Warrant. 2 *Roll's Rep.* 78.

And he may be presented for refusing to be sworn a Constable. *Mod. Rep.* 24.

B. R. order'd an Action to be brought against a Constable for committing one to the Compter without a Cause.

Several Constables and Parish-Officers, who had refused to give Accounts upon Oath of the Names of the Inhabitants, House-keepers, and Inmates in their several Parishes, were tried and fined 100 *l.* a-piece, 8 *Sept.* 1684.

One may be indicted, who being chosen Constable, and warned before a Justice of Peace to take his Oath, and voluntarily neglects or refuses to take it. *Allen* 78.

A Constable has Power through the whole Parish and Division. 18 *Car.* 2. The Case of the Inhabitants of *Shadwel.*

Constable of one Town may execute a Warrant in any other Town of the same County.

A Constable of one Town may execute a Warrant in any other Town in the same County, by Chief Justice *Hale*, Trial *per Pais*, 201.

A Constable may make a Deputy. 1 *Bulst.* 77. 1 *Roll's Rep.* 271. 1 *Roll's Abridg.* 591. *Moor* 845. *Cr. Car.* 585. He that is sworn, tho' hired, is the Constable. 1 *Sid.* 355.

A Constable cannot justify the Breaking of any Man's House in the Night-time, unless it be in the Case of Felony. 1 *Bulst.* 146. 5 *Co.* 92. *Seyman's* Case.

If

If a Conſtable takes a Man that dangerouſly wounds another, and ſuffers him to eſcape, and then the Party wounded dieth, if it be voluntary, 'tis Felony in the Conſtable, if negligent only, yet will he be, at leaſt, heavily fined. 11 *H.* 4.

A Conſtable may break open a Door to take an Offender, where a Felony is committed, or dangerous Wound given. *H. P. C.* 93.

If there be an actual Breach of the Peace, the Conſtable may impriſon the Party in the Stocks, in the Gaol, or in his Houſe, 'till he can bring him before a Juſtice of Peace. *H. P. C.* 92.

A Conſtable cannot be ſued out of the County where he is a Conſtable, for a Thing done by him in Execution of his Office. *Style* 393.

A Conſtable was indicted for refuſing to execute a Juſtice of Peace his Warrant to apprehend one for a Contempt. *Hill.* 16 *Jac.* 1. 2 *Roll's Rep. f.* 78.

An Alderman of *London* choſen Conſtable at a Leet in *Eſſex*, diſcharged upon a *Certiorari*, becauſe he is bound as Alderman to be preſent in *London* for the Government of the City. *Trin.* 16 *Car.* 1. *Jones's Rep.* 462. Alderman *Abdy's* Caſe. *J. C. Cro. Car.* 583. *Pl.* 3.

The High Conſtable of the Hundred of *Wanſtead* was diſcharged from being Collector of Money for the Poor of the Pariſh of St. *Peter Poor, London*, during his Office of Conſtable. *Jones's Rep. p.* 46. *Paſch.* 28 *Car.* 2. *B. R.*

T. was indicted for not going before a Juſtice of Peace to take the Oath of an Headborough, to which he was choſen at a Leet, and the Indictment was quaſh'd, becauſe it did not appear that any Notice was given him to go before the Juſtice. *Trin.* 24 *Car.* 1. *B. R. Style* 124. *Rex* ver. *Trigg.*

S. was preſented at the Leet to be Conſtable, and the Steward refuſed to ſwear him; upon that, the Juſtices at Seſſions made an Order that *S.* ſhould ſerve the Office, and ſwore him accordingly. On a *Certiorari* to remove this Order, Exception was taken, becauſe the Juſtices had intermeddled with a Thing which was not within their Cognizance; for 'twas ſaid, That the Appointment of a Conſtable belongs to the Leet, and the Lord of the Leet (at the Peril of the Forfeiture of his Leet) ought to take Care that a Conſtable be there choſen, and that he may be by his Steward. But the Exception was diſallowed by the whole Court, for the Election of a Conſtable properly belongs to

Where a Conſtable was choſe at the Leet, and the Steward refuſed to ſwear him.

the Homage. And altho' the Justices of Peace have not originally the Making of a Constable, yet that is a Matter of the Peace which is within their Jurisdiction, and they may examine this Matter in their Sessions. And as to the Swearing of the said Constable, any single Justice of Peace may do that; and the Order was confirm'd. *Trin.* 34 *Car.* 2. *B. R. Jones's Rep.* 212. *Rex* ver. *Stevens.*

When a Constable may break open Doors.

In Cases of Treason, Felony, or Breach of the Peace, a Constable, by Warrant from a Justice of Peace, may break open a House to apprehend the Criminal; but he ought first to require the Opening the Doors, and to inform the Person for what Purpose he came thither; and he may justify the Detaining of an Offender for a Day without Warrant, by the Command of a Justice of Peace. And in conveying a Felon, either before a Justice, or to Gaol, he may lock him in the Stocks, if unruly, to prevent his Escape. *Dalt.* 204, 342.

If a Constable arrests a Felon, and carries him to the County Gaol, but the Gaoler refuses the Prisoner, the Constable must not let him go; if he does, it is an Escape, adjudg'd *Hill.* 10 *H.* 4.

A Constable may commit one for Breach of the Peace in his Presence, without carrying him before a Justice; and he may take up suspected Persons who walk in the Night, or keep suspicious Company. *Savil* 98. 13 *H.* 7.

A Constable must not dispute any Warrant sent to him by a Justice, but must execute the same; and if the Justice exceed his Authority, generally the Constable is excused: But if a Justice of Peace send his Warrant to be executed where he hath no Jurisdiction, or in a Matter wherein he is no legal Judge, if the Constable execute it, he may be punished. And so it is where the Warrant is mistaken in the Penalty, or commands the Constable to act out of his Precinct. *Dalt.* 437.

One may be bound to his good Behaviour for Contempt of the Justices Warrant.

A Man may be bound to the Good Behaviour for any Abuse, or Contempt to the Justice's Warrant, and be indicted and fined for it. And a Constable need not shew his Warrant; but if he acquaint the Party with the Contents of it, it is sufficient: But let him take care how he apprehends a Person without a Warrant; for if he does, it will be false Imprisonment, though he obtain'd one afterwards. *Co.* 69. *Crompton* 149.

If a Conſtable, having apprehended a Criminal, permit him to go at large upon his Promiſe to return and appear before the Juſtices, he cannot by Virtue of his firſt Warrant retake him; but if the Party make his Eſcape, the Conſtable may purſue him, tho' fled into another County, and bring him back to the Juſtice of Peace. *Crompt.* 148.

If it happen that there are two Perſons of one Name, and the ſame Addition, and the Conſtable takes the wrong Perſon, 'tis no falſe Impriſonment; but if the Warrant be againſt a particular Perſon by Name not the Offender, and he apprehends another who is really the Offender, ſuch Taking is wrongful, and the Party may have his Action of falſe Impriſonment; but he will recover but little Damages. *Dyer* 244. Where there are two Perſons of the ſame Name.

Where a Conſtable hath a Warrant to execute for Sureties of the Peace, and afterwards receives a *Superſedeas* from the Court of *Chancery*, or from another Juſtice to diſcharge the Sureties, if he ſtill inſiſts upon the Party's finding Sureties, and he refuſes, whereby he is detained, it is falſe Impriſonment.

Conſtables are to cauſe Night-Watches to be ſet from *Whitſontide* 'till *Michaelmas*, which Watches are to be compoſed of the Inhabitants of the Pariſh, and to watch from Sun-ſet to Sun-riſing; and if ſuch Perſons refuſe, they may be bound to the Good Behaviour by a Juſtice, on Complaint of the Conſtable. 13 *Edw.* 1. Theſe Watchmen are to apprehend Night-Walkers, ſuſpected Perſons, arreſt Strangers, *&c.* Watchmen refuſing to ſerve to be bound to their good Behaviour, &c.

A Conſtable, by Warrant from a Juſtice of Peace, may ſell the Goods of an Offender apprehended to diſcharge the Expence of carrying him to Priſon, ſuch Goods being firſt appraiſed by ſome Inhabitants of the Place. 3 *Jac.* 1. *c.* 10. And in Caſe the Offender hath no Goods, then the Town where he was apprehended muſt be at this Expence; and the Conſtable, with three or four of the principal Inhabitants, may impoſe a Tax on every Inhabitant according to his Eſtate in Lands, and after the Rate of 5 *l.* for every Hundred Pounds of the perſonal Eſtate of a Tradeſman, which being allowed by a Juſtice, the Conſtable by Warrant may levy it on thoſe who refuſe; and if the Inhabitants refuſe to make a Tax, two Juſtices may by Warrant compel them to it. 3 *Jac.* 1. Offender muſt bear the Charges of his carrying to Gaol.

If a Conſtable be ſued for any Thing done by Virtue of his Office, he may plead the General Iſſue, and give the Special Matter in Evidence, *&c.* and if Conſtable ſued may plead the General Iſſue.

the Plaintiff be nonſuited, he ſhall have double Coſts. 7 *Jac.* 1. *cap.* 5.

Thus having touch'd a little on the Power and Duty of Conſtables in general, I ſhall proceed to treat of his Duty in particular; but firſt I ſhall give you his Oath, 'till which is adminiſtred, he is not properly in his Office.

The Oath of a Conſtable.

YOU *ſhall well and truly ſerve our Sovereign Lord King* George, *and the Lord of this Leet,* (*if ſworn in a Court-Leet*) *in the Office of a Conſtable in and for the Hundred of* A. *or Pariſh of,* &c. *for the Year enſuing, or until you ſhall be thereof diſcharged according to due Courſe of Law: You ſhall well and truly do and execute all Things belonging to the ſaid Office, according to the beſt of your Knowledge.* So help you God.

This Oath is now adminiſtred for the Shortneſs of it, but the Oath which was formerly given him was very long, and related to ſeveral Articles, the Chief of which are as follow, of which I ſhall treat in few Words:

Affrays.
Ale houſes.
Arms.
Arreſts.
Bakers.
Bawdy-houſes.
Bridges.
Carriages.
Cattle.
Clothiers.
Conventicles.
Cuſtoms.
Deer-ſtealing.
Deſerters.
Diſtreſs.
Dogs. *See* Game.
Drunkenneſs.
Dyers.
Eſcapes.
Exciſe.
Felons.
Fiſh.
Forcible Entry.
Game.
Gaming.
Gaol.
Hawkers.
Hedge-breaking.
Highways.
Horſes.
Hue and Cry.
Inns.
Juries.
Labourers. *Vide* Servants.
Land-Tax.
Malt.
Meaſures.
Militia.
Miniſters diſturb'd.
Papiſts.
Plague.
Preſentments.
Priſoners to Gaol.
Riots.

Rogues,

Affrays.

And first Constables are to command Affrayers to depart, to call others to their Assistance; to suppress Affrays, and keep the Peace; put Affrayers in the Stocks 'till they can carry them before a Justice; to pursue Affrayers into another County, &c. All this they may do *ex Officio*. *Dalt.* 33, 35. *Lamb.* 141. 4 *Co.* 4, 9. *Lamb.* 135, &c.

If one assault another in his Presence, or for whatever is a Breach of the Peace, he may carry the Offender before a Justice of Peace, without a Warrant; but if the Fighting is over, he must have a Warrant, and this is to find Sureties for his Good Behaviour.

If the Quarrelling or Fighting is not in his Sight, and he is informed of it, and refuses to go to keep the Peace, he may be presented by the Grand Jury at Sessions, and fined.

If Affrayers by him commanded to depart, refuse, or make any Resistance, he may justify the Beating of them, may call others to his Assistance, and if either he or they happen to be kill'd, 'tis Murder.

He may break open the Doors to see the Peace kept.

If any Person be wounded in fighting, he may carry the Offender before a Justice of Peace, who may bail or commit, &c. *Owen* 105. *Moore* 284.

Ale-houses.

If the Constable doth not levy 20 *s.* to the Use of the Poor, upon such who keep unlicens'd Ale-houses, which Distress he may sell after three Days; and if no Distress, then if he do not whip the Offender, one Justice may commit the Constable without Bail, until the Ale-house-keeper is punish'd, or until the

Conſtable pay 40 *s.* to the Uſe of the Poor.

He is to levy the Penalty on Ale-houſe-keepers ſelling leſs than Meaſure, &c. or forfeit 40 *s.* to be levied by Warrant from one Juſtice; and if no Diſtreſs, to be committed; and not levying Penalty for Tippling, forfeits 10 *s.* 1 *Jac.* 1. *c.* 9. 1 *Car.* 1. *c.* 14 11 & 12 *W.* 3. *c.* 15.

Ale-houſes.

Upon thoſe convicted of Drunkenneſs, he muſt levy 5 *s.* for the Poor; if the Party is not able to pay it, he muſt ſit in the Stocks ſix Hours, &c.

Not delivering the Poor's Moiety of the Penalty of 6 *s.* 8 *d. per* Barrel, for ſelling Ale to an unlicens'd Ale-houſe-keeper, over to the Church-wardens, &c. and they not diſtributing it among the Poor, forfeit double the Value. 4 *Jac.* 1. *cap.* 4.

He may take Arms from them who ride, or go unlawfully armed, in Terror of the People, and may carry ſuch Perſons before a Juſtice of Peace to find Sureties. *Dalt.* 35.

They muſt aſſiſt ſuch Perſons as have a Warrant from the Lord-Lieutenant, or Deputy, to ſearch for Arms, &c. which muſt be in the Day-time, unleſs in Towns, and if reſiſted, may enter with Force. And High Conſtables, Petty Conſtables, &c. ſhall be aſſiſted by others.

Arms.

His Majeſty's Servants, or Officers, Perſons purſuing Hue and Cry in Caſe of Felony, and other Offences, have lawful Authority to bear Armour or Weapons. *Dalt. c.* 9. 3 *Inſt.* 162.

Private Perſons arreſting others in dangerous Affrays, on Suſpicion of Murder, Felony, Night-walkers, &c. which they may juſtify, are to deliver them over to the Conſtables, &c. *Dalt.* 338.

Arreſts.

The Penalties inflicted on Bakers by Mayors, Juſtices, &c. for making Bread deficient in Weight and Goodneſs, &c. are to be levied by a Conſtable.

Bakers.

A Con-

Bawdy-houſes. A Conſtable may, with others call'd to his Aſſiſtance, enter Bawdy-houſes, and arreſt Perſons with lewd Women for Breach of the Peace, to be bound to their Good Behaviour. *Mich.* 13 *H.* 7.

Bridges. Where a common Bridge is in Decay, and it cannot be known who, or what Lands are to repair it, the Conſtable, and two of the moſt able Inhabitants in the Pariſh, muſt aſſeſs, and four Juſtices muſt allow ſuch Aſſeſſment.

Carriages. Conſtables, on Juſtice of Peace his Orders, are to provide Carriages on the marching of Soldiers, at the Rate of 1 *s. per* Mile for four Oxen, and two Horſes, or for ſix Oxen, and for a Cart and four Horſes 9 *d. per* Mile. Stat. 3 *Geo.* 1. *c.* 3.

Cattle. Conſtables, Tything-men, *&c.* are to ſeize all Cattle, Sheep, *&c.* imported from *Ireland*, or other Parts beyond the Seas, (except ſix Hundred yearly from the *Iſle of Man*) as forfeited for the Uſe of the Poor. *Engliſh*, or other Cattle intermix'd with *Iriſh* Cattle, ſhall be deemed *Iriſh* in all Reſpects. 32 *Car.* 2. *cap.* 2.

Clothiers. High Conſtables may hear and determine Complaints of Clothiers and their Work People; ſearch for and ſeize Ropes, Engines, *&c.* for the ſtretching of Cloth, by 4 *Edw.* 4. & 39 *Eliz. c.* 11.

Conventicles. Conſtables, Headboroughs, *&c.* are to levy the Fines impoſed on thoſe who ſhall be preſent at Conventicles; and by Virtue of a Juſtice's Warrant, may enter ſuch Houſes, break open Doors, upon their being refuſed Entrance, and take into Cuſtody Perſons unlawfully aſſembled, *&c.* 22 *Car.* 2. *c.* 1.

Conſtables, *&c.* knowing or being credibly informed of any Conventicle within their Precincts,, and not giving Information thereof to ſome Juſtice of Peace, or chief Magiſtrate, and endeavouring to convict the Parties, forfeit 5 *l. ibid.* Proteſtant Diſſenters are excepted out of this Act by 1 *W.* & *M. c.* 24.

Conventicles.

But if any Assembly of Dissenters shall be held in any Place with the Door lock'd or bolted, during the Time of Service, they are liable to Prosecution as others, notwithstanding taking the Oaths, &c. directed by the Act 1 *W. & M.* *c.* 24.

Any Person sued for acting according to the Stat. 22 *Car.* 2. *c.* 1. may plead the General Issue, and give the Special Matter in Evidence, and shall recover treble Costs. 22 *Car.* 2. *c.* 1.

Customs.

Constables must upon Request assist such Persons who have a Warrant from the Lord Treasurer, Barons of the *Exchequer*, or chief Magistrate of Ports, to search for Goods which have not paid Custom; and he may (if within a Month after the Offence) enter into any House in the Day-time, and if resisted, break it open.

He must be assisting to all Persons appointed by the King to collect or manage his Customs; and if the Custom-house Officer, or any acting in Aid of them, shall be sued, &c. they their Heirs, &c. may plead the General Issue, and give the several Acts relating to the Customs, or any of them, in Evidence. 14 *Car.* 2. *cap.* 11.

Deer-stealing.

Deer-stealers forfeit 20 *l.* being convicted before one Justice, either by Confession, or Oath of one Witness, of Coursing or Hunting Deer in any Place enclosed for keeping Deer, and 30 *l.* for every Deer, taken, wounded and kill'd. 13 *Car.* 2. *c.* 10. 3 & 4 *W. & M.* *c.* 10. These Penalties the Constable is to levy by Warrant from the Justice of Peace, by Distress, or may detain an Offender not exceeding two Days, if he do not presently pay the Money due upon Conviction, 'till he can make a Return of his Warrant of Distress.

He may enter any suspected Place by a Warrant from the Justice of Peace, and carry away Venison, Skins of Deer, Toils, &c. and the Offender before the Justice

Juſtice of the Peace, to give an Acount how he came by them.

Deer-Stealing. Pulling down Pales or Walls of Parks, is ſubject to the Penalty of 3 & 4 *W. & M. c.* 10. for killing Deer, *viz.* 30 *l.* And Perſons convicted of Deer-ſtealing, are to enter into Bond of 50 *l.* to the Perſon injured, for the future Good Behaviour, before their Diſcharge.

Deſerters. Any Conſtable, *&c.* has Power to take up a Perſon ſuſpected of Deſertion, and to bring him before a Juſtice; and if upon Examination, it ſhall appear that he is a Liſted Soldier, the Juſtice ſhall commit him to the County Gaol, and give an Account thereof to the Secretary at War. 1 *Geo. c.* 3.

Diſtreſs. Conſtables are to aſſiſt Landlords in taking Diſtreſſes for Rent in Arrear; and in the Appraiſement of the Goods, and Sale, *&c.* if the ſame are not replevied in five Days after they are diſtrained.

N. B. The Under-Sheriff, Conſtable, *&c.* have Power to adminiſter an Oath to two indifferent Men, as follows.

Appraiſer's Oath.

YOU *do Swear, that you will faithfully Appraiſe and Value the Goods now taken in Diſtreſs, and mentioned in the Inventory to you ſhewn, as between Buyer and Seller, according to the beſt of your Skill and Underſtanding; you ſhall not thro' Partiality, Intereſt or otherwiſe, over or under Eſtimate the ſaid Goods; but impartially do your Duties herein.*

So help you God.

Dogs. See Game.

Drunkenneſs. Conſtables are to levy the Penalty of 5 *s.* on Drunkards, for the Uſe of the Poor, or ſhall forfeit 10 *s.* Stat. 4. *Jac.* 1. *c.* 5. 21 *Ja.* 1. *c.* 7.

Conſtables

Dyers. Conſtables are to aſſiſt Searchers of dyed Cloaths, to enter and examine whether any Cloths or Stuffs are deceitfully dyed, and the Penalties inflicted on Dyers for dying Cloth deceitfully, are to be levied by Conſtables by Warrant of two or more Juſtices. 13 G. 1. *c.* 24.

Exciſe. Conſtables are to attend Officers of Exciſe on Requeſt, and enter with them Brewhouſes, private Places, &c. for Diſcovery of Frauds; and by Warrant from Juſtices, they are to levy the Penalties on Offenders againſt any Law of Exciſe, by Diſtreſs, &c. 12 *Car.* 2. *c.* 23. 7 & 8 *W.* 3. *c.* 31.

Eſcapes. A Conſtable permitting a Felon to eſcape before arreſted, is guilty of a Miſdemeanor, for which he may be indicted and fined, * and if the Felon be actually in Cuſtody, and then he voluntarily permits him to eſcape, 'tis Felony in the Conſtable; but if the Eſcape be involuntary, it is only finable. And a Conſtable may diſcharge any Perſon arreſted on Suſpicion of Felony only, where no Felony is committed; but otherwiſe he muſt not diſcharge him, though he knows the Party is Innocent; but it muſt be done by due Courſe of Law. And he may put a Felon into the Stocks, and lock him in, or put Irons upon him, or pinion him, to prevent Eſcapes when he is about to carry him before a Juſtice of Peace, or to Gaol.

* But it muſt ſet forth for what Felony he was taken, and when it was committed. Cr. Eliz. 752. Cro. Eliz. 200.

Felons. Conſtables, *ex officio*, are to apprehend Felons, call others to their Aſſiſtance, apprehend Perſons upon Suſpicion, and carry them before a Juſtice, &c. and any Perſon may arreſt one who has committed Felony. The Conſtable may juſtify the Breaking open a Houſe to take a Felon; and if the Felon fly, he is to make an Inventory of his Goods, and ſend Hue and Cry after him, and the Neglect thereof is finable by the Juſtices.

If

If upon ſuch Flight he is apprehended in another County, the Felon muſt be committed where taken, and not where the Fact was done.

Felons. Two Juſtices (*Quorum unus*) are to ſet a Tax upon every Pariſh in a Hundred, where Damages are recovered againſt any one or more Inhabitants of that Hundred, upon the Statute of *Winton*; and the Conſtables of every Pariſh are to ſet a Tax upon every Inhabitant of thoſe Pariſhes, where they refuſe to contribute, and may levy the ſame by Diſtreſs, &c.

Fiſh. Conſtables are to levy the Penalty of 10 *s.* for fiſhing in a River without the Owner's Conſent, or on thoſe who Fiſh with unlawful Nets within five Miles of the Sea-Coaſt; and to ſearch for unlawful Nets, Engines, &c. 13 & 14 *Car.* 2. *c.* 24. & 30 *Car.* 2. *c.* 9.

Forcible Entry. Conſtables refuſing to give Aſſiſtance to Juſtices of Peace in removing forcible Entries, or carrying Offenders to Gaol, ſhall be committed and fined. 5 *R.* *c.* 7.

Game. Conſtables are to carry Higlers, Chapmen, Victuallers, &c. before a Juſtice, who have in their Cuſtody any Hare, or other Game; and by a Juſtice's Warrant are to ſearch ſuſpected Houſes for Game, &c. They may carry Perſons not qualified to kill Game, before a Juſtice for keeping Greyhounds, ſetting Dogs. Game-Keepers are to be entred with the Clerk of the Peace. 22 & 23 *Car.* 2. *c.* 25. 4 & 5 *W.* & *M.* *c.* 23. 5 *Ann.* *c.* 14. 3 *Geo.* *c.* 11.

Gaming. He muſt once a Month ſearch Houſes where unlawful Games ſhall be kept, as Tables, Cards, &c. and they may commit the Maſter of the Houſe, and the Gameſters, 'till they give Sureties not to do the like again. If the Conſtable Neglects he forfeits 40 *s.* for every Default. 33 *Hen.* 8. *c.* 9.

Gaol.

If Gaolers refuse to receive a Felon, the Constable may either secure the Prisoner in his own House, or carry him back to the Town where apprehended, and the Town shall be chargeable for the Keeping of him 'till the next Gaol-Delivery, where the Gaoler shall be punished. Constables are to levy Money for Reparation of Gaols, by Warrant from Justices. 11 & 12 *W.* 3. *c.* 19.

Hawkers.

Constables refusing to assist in putting the Laws in Execution against Hawkers, &c. forfeit 40 *s.* and any Person may seize a Hawker 'till he produce his License, 8 & 9 *W.* 3. *c.* 25.

Hedge-breakers.

Constables are to whip Hedge-breakers, Robbers of Orchards, &c. on their not making Satisfaction ordered by a Justice; if the Constable neglect, then he may be committed without Bail, until the Offender is whipped. 43 *Eliz. c.* 7. Procurers and Receivers of stol'n Wood, are liable to the same Punishment.

They may apprehend Persons carrying Bundles of Wood, suspected of Hedge-breaking, or of having in their Possession any Underwood, Poles, young Trees, Gates, Stiles, &c. and carry them before a Justice; Not giving a good Account how they came by the same, to make Recompence, &c. or be whipp'd by the Constable. Buyers of stol'n Wood to pay treble the Value to the Party from whom taken.

Highways.

By 3 & 4 *W.* & *M. c.* 12. Constable and Inhabitants must Yearly meet the Day after *Christmas* Day, to make Lists of Persons qualified to be chose Surveyors of the High-ways; which Lists the Constable must return to the Justices at a Special Sessions, on the 3d of *January* following, under Penalty of 20 *s.*

Constables are to be aiding and assisting in putting the Acts in Execution

relating

Highways. relating to the Repairing the Highways, on Penalty of 40 *s.* And are to levy the Penalties relating to Scavengers, and Defaults in cleaning the Streets of *London*, &c.

Horſes. Conſtables are to be likewiſe aſſiſting in driving of Commons, Foreſts, &c. of Horſes and Cattle, on Pain of 40 *s.* And alſo of ſeizing of Stone-Horſes put into Commons among Mares under-ſized. 32 *H.* 8. *c.* 13.

In Fen Grounds the Horſes may be but 13 Hands High.

Hue and Cry. A Conſtable is to raiſe Hue and Cry upon Notice, and deſcribing the Felon, and telling him which way he is gone; and for this Purpoſe he is to call upon the Pariſhioners to aſſiſt him in the Purſuit of the Felon to the next Conſtable, and he to the next, who is to do as the firſt, and ſo from Town to Town, and County to County, &c. and in the mean Time the firſt Conſtable is to make an Inventory of the Felon's Goods, in the Preſence of his Neighbours. If he Refuſe to purſue the Felon, he may be indicted, &c. but the Place where he gave Notice muſt be ſet forth in the Indictment. *Cro. Eliz.* 654, 655.

Purſuers of the Hue and Cry may ſearch ſuſpected Houſes, and arreſt ſuſpicious Perſons.

Inhabitants of any Hundred, where Hue and Cry is made, neglecting to purſue, ſhall anſwer one Moiety of the Damages recoverable againſt the Hundred where the Robbery is committed, Stat. 27 *Eliz. c.* 13.

Where any one of the Robbers is apprehended, or where the Action is not proſecuted within one Year after the Robbery committed, the Hundred is not chargeable for the Robbery. And the Hue and Cry ſhall not be judged Legal, unleſs the Purſuit be both by Horſe and Foot. *Dy.* 370.

Co. 7. Rep. 6.

He who goeth not at the Command of the Conſtable, upon Hue and Cry, ſhall be grievouſly fined and impriſoned. *Co. 2. Inſt.* 172.

Hue and Cry.

Where Damages are recovered againſt one, or ſome few Inhabitants of the Hundred, for a Robbery, and the reſt refuſe to contribute thereunto, two Juſtices of the Peace (*Quorum unus*) dwelling within or near the Hundred, may, for the Levying thereof, ſet a Tax upon every Pariſh within that Hundred; according to which the Conſtables and Headboroughs of every Town muſt Tax the particular Inhabitants within their Limits, and then levy the Money upon ſuch as refuſe by Diſtreſs and Sale of their Goods, reſtoring them the Overplus; and after the Money is gathered, they are to deliver the ſame to the Juſtices, or ſome of them who made the Rate, within Ten Days. Stat. 27 *Eliz. c.* 13.

Conſtables on Complaint may Cauſe Inn-Keepers to be indicted for refuſing to lodge a Traveller, *&c.* 10 *H.* 7. Or the Traveller may Proſecute the Inn-Keeper in any of the Courts at *Weſtminſter*, and recover Damages. But then ready Money muſt have been offered beforehand, if required. *Co. 9. Rep.* 87. b.

Inns.

N. B. Upon any Diſputes in an Ale-Houſe, or Tavern, *&c.* about paying the Reckoning, and the Parties offer to make their Eſcapes without Paying, if there be no Swords drawn, Beating, Wounding, or viſible Breach of the Peace, the Conſtable is not bound to go though ſent for, nor is it warrantable for him to arreſt and carry them before a Juſtice, unleſs a Warrant be put into his Hand; for this is only a Debt, and the Party aggrieved muſt bring his Action for the Credit he gave for the Victuals or Drink, *&c.* being freely

freely delivered by his Conſent; and thoſe Conſtables, which are over Officious to trouble themſelves this way, may bring themſelves into Trouble, and be laugh'd at by thoſe who ſet 'em on Work.

Inns.

They are to give in to the Juſtices at *Michaelmas* Seſſions Yearly, Liſts of Perſons qualified to ſerve on Juries. Neglecting to return Liſts, forfeit 5 *l.* to the King. Stat. 7 & 8 *W.* 3. *c.* 12.

But by Stat. 3 *G.* 2. after they have made their Liſts, they may ſubſcribe them in the Preſence of a Juſtice, and atteſt them upon Oath to the beſt of their Knowledge; which Liſts being ſigned by the Juſtice, ſhall be deliver'd by the Conſtable, to the High Conſtable, who is to deliver 'em in to the Quarter-Seſſions in open Court, atteſting on Oath their Receipt of them from the Petty Conſtables, and that no Alteration has been made ſince his Receipt thereof; and the Liſts ſo deliver'd in, ſhall be as effectual as if deliver'd in by the Petty Conſtables.

Juries.

The Qualifications are, 80 *l. per An.* Freehold for a Grand Juryman, and 10 *l. per Annum* for a Petty Juryman, except in Corporations, where a Freeman worth 40 *l.* in Goods may ſerve on the Petty Jury. 7 & 8 *W.* 3. *c.* 32.

High Conſtables are to iſſue their Precepts to Petty Conſtables, to prepare ſuch Liſts, by virtue of a Warrant from Juſtices in the Seſſions, under the Penalty of 10 *l.* 3 & 4 *Ann.* *c.* 18.

In Harveſt Time a Conſtable may ſet Artificers, and ordinary Tradeſmen on Work, and put thoſe in the Stocks for two Days and a Night who refuſe. Conſtable neglecting his Duty herein forfeits 40 *s.*

Labourers.

Stat. 5. Eliz. c. 4.

Conſtables are to give Aſſiſtance in collecting the Land-Tax, taking of Diſtreſſes, &c. when refuſed Payment. 2 *W.* & *M.* &c.

Land-Tax.

They

Malt. They have Power to ſearch for bad Malt; and if they find any deceitfully made, or bad mingled with good, they may, with the Advice of a Juſtice, cauſe the ſame to be ſold, at ſuch Rates as the Juſtice ſhall pleaſe. 2 & 3 *Ed.* 6. *c.* 10.

Meaſures. Conſtables are to ſearch and examine if any Perſons uſe other Meaſures than *Winchester* Meaſure, and agreeable to the Standard. 22 *Car.* 2. *c.* 8.

Militia. They are to levy the Money charged upon any Perſon by the Lord Lieutenant, or his Deputies, for the providing Arms for Horſe and Foot Soldiers; and if no Diſtreſs is to be found, may, by Warrant from the Lord Lieutenant, &c. commit the Offender until he make Satisfaction.

Miniſter diſturb'd. A Conſtable, *ex officio*, may apprehend one diſturbing a Miniſter, and carry him before a Juſtice of Peace.

Plague. He may command any Perſon infected to keep within his Houſe; and if after ſuch Command he wilfully go abroad, having a Sore upon him, 'tis Felony; and if no Sore, he may be puniſhed as a Vagabond, and bound to his good Behaviour for a Year. If he Neglects to levy the Money appointed by Juſtices to relieve the Poor infected, forfeits 10 *s.* for every Offence. Stat. 1 *Jac.* 1. *c.* 31.

Popiſh Recuſants. Conſtables are to certify to the Quarter-Seſſions the Names of Popiſh Recuſants Convict; returning to the Places of their Birth. 35 *Eliz.* *c.* 1.

And they are to preſent once a Year thoſe, who abſent themſelves from Church for the Space of a Month: Neglecting, to forfeit 20 *s.* 7 *Jac.* 1. *c.* 2.

Preſentments. They are alſo at the Quarter-Seſſions and Aſſizes to preſent all Things againſt the Peace, and belonging to their Offices, mentioned in the Particulars of their Oath: But they commonly make Returns formally, and bring

Preſentments. bring them to a Juſtice to ſign, and carry them to the High Conſtable, who makes the Oath that he had them from the Petty Conſtable.

Carrying Priſoners to Gaol. In conveying a Felon, either before a Juſtice, or to Gaol, he may lock him in the Stocks, if unruly, to prevent his Eſcape.

The Houſe of Correction, and the Compters of the Sheriffs of *London* are the Common Priſons for Offenders for the Breach of the Peace, &c. To the laſt, Conſtables may convey Perſons taken up by the Watch late at Night, and who are unrly or ſuſpicious. But they ought to be very careful who they ſend thither, for fear of Actions for falſe Impriſonment, whereby they may be liable to pay Damages, &c.

A Conſtable is *ex Officio* to ſuppreſs all Riots, &c. and to commit the Offenders, and all ſuch who break the Peace. Stat. 17 *R.* 2. *c.* 8.

Rogues. Conſtables, Tithingmen, &c. are to whip wandring Vagabonds, &c. by ſtripping them naked from the Waiſt upwards, and ſlaſhing them till their Bodies are bloody, and then he muſt ſend him to the Place of his Birth; and if that is not known, then to the Place of his laſt Abode, for one Year before Whipping; and if that is not known, then to the Town thro' which he paſs'd laſt unpuniſh'd; and if it cannot be known where he was born or dwelt, then to the Houſe of Correction, &c. to be employed in Work or in Service for a Year.

The Conſtable is to give him a Teſtimonial of the Day and Place of his Whipping. Conſtable not indeavouring to ſeize Rogues, or not puniſhing 'em, forfeits 10*s.* Or ſuch Conſtable who doth not receive a Rogue, who is to be convey'd from one Town to another till he comes to the Place of his Birth, &c. he forfeits 5 *l.* Or if he receives him, and doth not convey him to the next Conſtable, the like Penalty. Stat. 39 *Eliz.* *c.* 4.

Rogues. Perſons running away from their Families, and leaving a Charge to the Pariſh, are to be puniſh'd as incorrigible Rogues. 7 *Ja.* 1. *c.* 4.

Sabbath. They are to levy the Penalty of 5*s.* on Perſons reſorting to Wreſtling, Dancing, or other Sports on a *Sunday*, and alſo of Perſons doing any worldly Labour on that Day. Butchers killing Meat, *&c.* 1 *Car.* 1. *c.* 1. 3 *C.* 1. *c.* 1. 29 *Car.* 2. *c.* 7.

Perſons ſerving any Warrant, Proceſs, *&c.* on a *Sunday* (except in Caſes of Treaſon, Felony, and Breach of the Peace) ſhall anſwer Damages as if they had done the ſame without Warrant, for falſe Impriſonment, and the Service ſhall be void. 29 *Car.* 2. *c.* 7.

Shoemakers. By Warrant from two Juſtices Conſtables ſhall ſearch after Boots, Shoes, and other Leather, purloin'd, imbezill'd, ſold, or pawn'd by Journeymen Shoemakers in *London*, and cauſe ſuch Journeymen to be whipp'd, *&c.* 9 *G.* 1. *c.* 27.

Soldiers. Conſtables, Tithingmen, *&c.* are to quarter Soldiers in Inns, Ale-houſes, Victualling-houſes, *&c.* 1 *Geo.* 1. *c.* 27.

If any High Conſtable, *&c.* ſhall receive or agree for any Money or Reward to excuſe any Perſon from quartering of Soldiers; or if any Victualler ſhall refuſe or receive any Soldiers, and be thereof convicted by the Oath of the Conſtable, *&c.* before one or more Juſtices, in either of theſe Caſes, a Penalty not exceeding 5*l.* nor leſs than 40*s.* is incurr'd, levyable by Diſtreſs and Sale, by Juſtices Warrant, directed to any other Conſtable, *&c.* to the Uſe of the Poor.

Any one or more Juſtices may command any High Conſtable, or other Conſtable, *&c.* to give an Account in Writing of the Number of Officers or Soldiers billeted by them, and of the Names of the Perſons on whom billeted, and their Signs, *&c.* 10 *Geo.* 1. *c.* 6.

Swearing.

Conſtables are to levy the Penalties for prophane Swearing, which is 1 *s.* for a Servant, Labourer, *&c.* and 2 *s.* for others, to the Uſe of the Poor, and double for the ſecond Offence, and treble for the third, to be levied by Warrant of one Juſtice, *&c.* Stat. 6 & 7 *W. & M. c.* 11. if no Diſtreſs, Offender muſt be ſet in the Stocks.

Tithes.

By Warrant from two Juſtices, Conſtables, *&c.* are to levy the Money adjudg'd for refuſing the Payment of ſmall Tithes, by Diſtreſs and Sale in three Days. 10 & 11 *W.* 3. *c.* 15. 7 & 8 *W.* 3. *c.* 6. & 4 *Ann.*

The Tithes are to be under 40 *s. per Ann.* and Tithes due from *Quakers* under 10 *l.* are thus recoverable. 1 *G. c.* 7.

In *London*, the Sums of Money ſettled in lieu of Tithes, by 22 & 23 *Car.* 2. *c.* 15. are to be paid Quarterly to the Parſons, *&c.* and upon Refuſal, or Neglect to pay the ſame, and Demand made on the Premiſſes, the Lord-Mayor, on Oath of ſuch Refuſal or Neglect, may grant Warrants for the Collector, with the Aſſiſtance of a Conſtable in the Day-time, to levy the ſame by Diſtreſs and Sale of the Party's Goods, *&c.*

Vagrants.

Conſtables are to apprehend Vagrants, and carry them before a Juſtice. Conſtables or Officers neglecting to apprehend them, is a Breach of Duty, and any other Inhabitants refuſing to apprehend Vagrants, being charged by a Juſtice, forfeit 10 *s.* to the Poor, to be levied by Diſtreſs.

As a Reward for Apprehenſion, a Juſtice of Peace may by his Warrant order the Conſtable, or other Officer where a Vagabond was found begging, to pay 2 *s.* to the Perſon apprehending, and a Recompence for Trouble and Loſs of Time beſides.

Conſtables are to make general Privy Searches for Vagrants, *&c.* before the Quarter-Seſſions. He is to convey Vagrants by the Juſtice's Paſs and Certificate,

cate, according to the Directions therein, and deliver them to the next Conſtables, &c. taking a Receipt.

If a Petty Conſtable ſhall counterfeit ſuch Certificate, or alter any Sum, or not convey the Perſon therein intended to be conveyed, he ſhall forfeit 20*l.* above the Sum ſo fraudulently taken, one Moiety to the Poor, the other to the Informer, to be levied by a Warrant from any Juſtice of the County where the Offence was done.

A Juſtice may examine a Conſtable upon Oath, touching ſuch Conveying; and if he refuſes to be ſworn, or neglects his Duty in any thing, then he is to loſe the Sum allowed by the Certificate.

Vagrants.

When a Petty Conſtable has convey'd the Vagrant to the Place order'd by the Paſs, on his bringing to the Conſtable ſuch Certificate as aforeſaid, with the Receipt from the Officer to whom the Vagrant was deliver'd, the chief Conſtable ſhall pay ſuch Petty Conſtable the Allowances aſcertained in the Certificate, taking the ſaid Certificate and his Receipt, which is to be allow'd the chief Conſtable by the Treaſurer.

Conſtables are to cauſe Beggars, &c. to be whipp'd, on Complaint of two Inhabitants

Neglecting it to forfeit 10*s.* and failing in their Duties in other Reſpects, to forfeit 20*s.* 12 *Ann. c.* 23. *Seſſ.* 2.

Watches.

Conſtables muſt cauſe Night-watches to be ſet from *Whitſontide* till *Michaelmas*, from Sun-ſet to the Riſing thereof, with 4 Men, or more, who muſt be able and Inhabitants of the Place, and watch by Turns; if they refuſe, the Conſtable may complain to a Juſtice of Peace, who may bind the Party refuſing to his Good Behaviour, and ſo over to the next Quarter-Seſſions, &c. Or he may preſent ſuch Perſon for his Default at the Aſſizes, or Seſſions of the Peace.

The

Watches.

The Inhabitants are not compellable to watch at the Will of the Conſtable, but only when their Turn cometh, according to the Uſe and Cuſtom of the Place.

A Conſtable appointed a Man to watch, and becauſe he refuſed he put him in the Stocks: In an Action of falſe Impriſonment, the Defendant juſtified as Conſtable, but did not ſhew that the Plaintiff was an Inhabitant of the Town, and ill. *Cr. Eliz.* 204.

A Conſtable may impriſon in the Stocks one who refuſes to Watch and Ward. 3 *Leon.* 208. *Cro. El.* 204. But then he ought to have a Warrant from the Juſtice for it firſt. *Cr. El.* 204.

Warrants to execute.

Where a Warrant is directed by a Juſtice of Peace to the Sheriffs, Bayliff or his Servant, or to the Conſtable, or other private Perſon to arreſt one, ſuch Perſon cannot command another to do it, neither by Word nor Writing, but muſt do it himſelf. *Co.* 9. *Rep.* 69.

If the Warrant is directed to the Conſtable by Name, commanding him to execute it, tho' he is not compellable to go out of his Pariſh, yet he may, if he will, and ſhall be juſtified by the Warrant in ſo doing; but if 'tis directed to all Conſtables generally, it ſhall be taken reſpectively, and in ſuch Caſe a Conſtable cannot execute it out of his Precinct. 1 *Salk.* 106. Caſe of the Village of *Chorly*. *Trin.* 11 *W.* 3. *B. R.* Held ſo likewiſe in the Caſe of the *King* and *Chandler*. *Hill.* 11 *W.* 3.

It is at the Election of a Conſtable to carry a Perſon apprehended before any Juſtice, if the Warrant be not Special to bring the Offender before the Juſtice who granted it. 5 *Rep.* 59. And a Juſtice of Peace his Warrant ought to ſpecify the Cauſe of it's being iſſued.

A Man may be bound to his Good Behaviour for any Abuſe or Contempt to the Juſtice's Warrant, and may be indicted and fined for it.

If he is indicted for not executing a Warrant, you muſt ſhew ſome particu-

lar Act of Diſobedience, and not generally that he did not execute it. *Trin.* 20 *Car. B. R.*

He may juſtify the Detaining an Offender for a Day, by the Command of a Juſtice of Peace, without a Warrant, not having an Opportunity juſt then to examine him. *Moore* 408.

Warrants to execute.

If a Juſtice ſends his Warrant to a Conſtable, to bring a Perſon before him to anſwer to ſuch Matters as ſhall be objected againſt him, and doth not ſpecify the Cauſe in his Warrant, for which he iſſued the ſame, this Warrant is unlawful, and the Officer is liable to an Action of falſe Impriſonment if he executes it; for all Warrants not ſpecifying the Cauſe, are utterly againſt Law. *Co.* 4 *Inſt. Tit. de frangent. Priſon.* Except for Treaſon, or Warrants from the Council, Secretaries of State, or Lord Chief Juſtice, theſe need not ſet forth the Cauſe for Reaſons of State.

If a Conſtable be indicted for not executing a Warrant, you muſt ſhew ſome particular Act of Diſobedience, and not generally that he did not execute it. *Trin.* 20 *Car. B. R.*

A Warrant from a High Conſtable to Petty Conſtables to make Preſentments of Offences committed in their Precincts.

BY *Virtue of a Warrant to me directed from*, &c. *four of His Majeſty's Juſtices of the Peace for this County, Theſe are to require you to make your Appearance at the next General Quarter-Seſſions of the Peace, to be held at*, &c. *on*, &c. *for the County aforeſaid, and then and there to carry with you, and produce in Writing, a Preſentment, containing the Names, Profeſſions, and Places of Abode, of all, or any Perſons which have done or committed Treaſon, Murder, Felonies, Robberies, Thefts, Riots, Routs, made unlawful Aſſemblies, Aſſaults, Batteries, Bloodſhed, Reſcous, uſed deceitful Weights or Meaſures, Foreſtalling Ingroſſing, or Regrating, not purſuing Hue and Cries, keeping Ale-houſes without Licenſe, keeping Bawdy-houſes, being Drunkards, Swearers, Blaſphemers, Prophaners of the Sabbath,*

bath, Harbourers of Inmates, building Cottages contrary to Law, Incroachment upon Commons, Defaults in not repairing Highways and Bridges, and in cleansing of Ditches, and generally all manner of Trespasses and Offences whatsoever, inquirable by you, and committed within your Parish and Precincts, to the End that Offenders may be punished according to Law. Dated, &c.

The Form of a Constable's Presentment.

The Presentment of *A.* B. Constable of, &c. in the County of, &c. made at the General Quarter-Sessions of the Peace, held for the said County, the Day of, &c. 1723.

THE *said* A. B. *says upon his Oath, That* C. D. *of the Parish of,* &c. *in the County of,* &c. *aforesaid, does at this Time, and has for the Space of one Month past, kept an unlawful Gaming-House in the said Parish of,* &c. viz. *He has permitted Servants, Apprentices,* &c. *to play at Cards, Dice, and other Games prohibited by Law, to the great Incouragement of Vice, and Disturbance of the Neighbourhood there.*

The said A. B. *likewise further presents upon his Oath, That* E. F. *of the said Parish of,* &c. *frequently carries out stinking Carcasses, and other Filth into the Highways, which is a common Nusance to the Parish, and an Annoyance to Travellers.*

The said A. B. *also presents* G. H. *to be a common Disturber of the Peace.*

A Warrant from Justices to constitute another Constable on the Death of a former, or his Removal out of the Hundred.

Essex, ss. WHereas *we are credibly informed, That* A. B. *of,* &c. *who at the last Quarter-Sessions of the Peace held for this County, was elected and sworn High Constable of the Hundred of,* &c. *for the County aforesaid, is lately dead (or removed with his Family out of the said Hundred before the Time he ought to serve is expired) whereby the said Hundred of,* &c. *is at present destitute of a Constable to execute Warrants, and to keep the Peace: These are therefore in His Majesty's Name to command you (whom we think fit to serve in the said Office) personally to come and appear before us, or some of His Majesty's Justices of the Peace for the County aforesaid, to take the Oath of a*

Constable, and to serve His Majesty in that Office until the usual Time of electing new Officers. Given, &c.

A Warrant to remove a Constable continuing in his Office above a Year.

13 & 14 Car. 2. cap. 12. Two Justices.

Essex, ss. *Whereas it appeareth to us,* A. B. *and* C. D. *two of his Majesty's Justices of the Peace of the County aforesaid, that* R. K. *hath lately executed the Office of a Headborough, in and for the Parish of* L. *aforesaid, during the Space of one whole Year, and doth still continue to execute the said Office after the Expiration of the said Year, contrary to the Form of the Statute in that Case made and provided: Now we do hereby, according to the Power and Authority given unto us concerning the Premisses, discharge you the said* R. K. *from the Office of Constable in and for the said Parish of* L. *requiring you from henceforth to forbear the Execution thereof in any Matter or Thing whatsoever, until further Order shall be taken therein.* Given, &c.

By the Statute of 3 *Jac. c.* 10. an Offender who is to be carried to Gaol, must bear his own Charges, and of those who convey him; if he refuse, then the Constable, by Warrant from one Justice, may sell his Goods, &c.

A Warrant to levy upon the Offender's Goods the Charges of carrying him to Gaol.

3 Jac. c. 10. One Justice.

Essex, ss. *Whereas it appeareth to me, upon the Complaint of the Parishioners of* M. *in the County aforesaid, that the Charges of* J. L. *and of those who conveyed him to Gaol, being sent thither by my Warrant upon Suspicion of Felony, did amount to* 15 s. *and that the said* J. L. *hath Goods and Chattles within your Township, sufficient to defray the said Expence: These are therefore in His Majesty's Name to Command you to levy the said Sum of* 15 s. *by Distress and Sale of the Goods of the said* J. L. *within your Parish, causing the same before the Sale thereof, to be appraised by some of the Neighbours there,* viz. *where he was taken, and that you pay the said Sum unto the Parishioners of* L. *in the said County; and hereof fail not,* &c.

If the Offender hath no Goods, &c. then the Constable and Church-wardens, and three of the Inhabitants; and if there are no such Officers, then four of the

the principal Inhabitants may tax all the reſt, which Tax muſt be allowed by one Juſtice; and if they refuſe, then by a Warrant from one Juſtice the Officer may levy it.

A Warrant to levy a Tax on Pariſhioners for defraying ſuch Charges where the Offender hath no Goods.

3 Jac. 1. c. 10. One Juſtice.

WHereas C. W. *by Virtue of my Warrant bearing Date*, &c. *was conveyed to the Gaol of*, &c. *for committing Felony*, *by* C. D. *Conſtable of*, &c. *and* G. E. *and* M. N. *of*, &c. *aforeſaid, the Charges and Expences whereof amounted to* 20 s. *and the ſaid* C. W. *having no Goods or Chattels to defray the ſaid Expence, a Tax upon the Inhabitants of the ſaid Pariſh of*, &c. *hath been made according to Law, for paying and ſatisfying the ſame: And whereas the ſeveral Perſons mentioned in the ſaid Taxation, or Aſſeſſment (whoſe Names and the Charges upon them are under-written) have refuſed to pay the reſpective Sums on them taxed, for the Purpoſe aforeſaid, contrary to the Act of Parliament in that Caſe made: Theſe are therefore to Require you, or either of you, to levy the ſaid ſeveral Sums herein after-mentioned, upon the Goods and Chattels of the reſpective Perſons ſo taxed as aforeſaid, which ſhall refuſe to pay the ſame, returning to them the Overplus.* Given, &c.

The Form of the Rate or Tax.

A *Rate or Tax made by us, whoſe Names are hereunto ſubſcribed, the* 30*th Day of* June, 1701, *being the Conſtables, Church-wardens, and three other Inhabitants of the Pariſh of* L. *in the County of* E. *where* J. L. *was lately taken and conveyed to the common Gaol of the ſaid County, upon Suſpicion of Felony, which ſaid Tax is made by us, and charged upon the Inhabitants of the ſaid Pariſh, to defray the Charges for carrying the ſaid* J. L. *to Gaol, he having no Goods to ſatisfy the ſame.*

		l.	*s.*	*d.*
Imprimis,	A. B.	0	1	0
	C. D.	0	0	9
	E. F.	0	2	0
	G. H.	0	1	3

I *A. B.*

I *A. B. Eſq*; one of His Majeſty's Juſtices of the Peace of the County of *Eſſex*, do allow the Tax above-written. Witneſs my Hand this 30th Day of *June*, 1702.

A. B.

R. W. Conſtable
A. B. } Church-
C. D. } Wardens.
E. F. } Inhabi-
G. H. } tants of
J. K. } H—

If they refuſe to pay the ſeveral Sums at which they are taxed, then levy it by this Warrant, *&c.*

A Warrant to levy the Tax upon thoſe that refuſe to pay, *&c.*

3 Jac. 1. c. 10. One Juſtice.

Eſſex, ſſ. WHereas *the Perſons whoſe Names are under written, have been lawfully taxed in the ſeveral Sums herein after-mentioned, and which are added to their reſpective Names, in order to ſatisfy the Charges expended by* A. B. *and thoſe whom he called to his Aſſiſtance, to carry* J. L. *to Gaol, which ſaid Perſons have refuſed to pay the ſame, contrary to the Form of the Statute in that Caſe made and provided: Theſe are therefore to require you, or either of you, to levy the ſaid Sums upon the ſeveral Goods and Chattels of the reſpective Perſons ſo taxed, as aforeſaid, and refuſing to pay the ſame, returning the Overplus to them reſpectively.* Given, *&c.*

	l.	*s.*	*d.*
A. B. —	0 —	1 —	0
C. D. —	0 —	0 —	9
E. F. —	0 —	2 —	0
G. H. —	0 —	1 —	3

13 & 14 Car. 2. c. 12.

By this Statute the Conſtable, and other Inhabitants of the Pariſh, may tax all Perſons chargeable by the 43 *Eliz. c.* 2. to reimburſe their Charges for conveying Vagabonds, *&c.* to the Houſe of Correction, and for other Pariſh Charges.

The Perſons to be taxed by the Act are every Inhabitant of the Pariſh, the Parſon, or the Vicar, and every Occupier of Houſes, Lands, Tithes, and Woods, but the Landlord is not to be taxed in Reſpect of his Rent.

Now the Tax upon Land is to be made according to the yearly Rent, but no Man is to be taxed for the Stock he hath upon the Lands; but if a Clothier, or Merchant, having a conſiderable Stock in Trade or

or Merchandize, and occupy Lands, they may be taxed for both.

The Taxation of Perſonal Eſtates muſt be in the Pariſh to which 'tis taxed, and after the Rate of 5 *l.* for every 100 *l.*

This Tax or Rate muſt be confirmed under the Hands and Seals of two Juſtices of the Peace; and then if the Perſon taxed refuſe to pay, the Conſtable, by Warrant from the Juſtices, may levy it.

Firſt, if the Inhabitants refuſe to make a Tax, two Juſtices may make a Warrant, requiring them to do it; the Form of which Warrant may be thus:

A Warrant to compel Pariſhioners to make a Tax.

Eſſex, ſſ. WHereas A. B. *of*, &c. *Conſtable, hath this Day been before us, and made Complaint that he hath expended the Sum of* 20 s. *in the conveying of*, &c. *a Felon to Gaol, by Virtue of a Warrant from*, &c. *one of His Majeſty's Juſtices of the Peace for this County, and the ſaid* A. B. *having requeſted the Church-wardens, and ſeveral Inhabitants of the ſaid Pariſh of*, &c. *to make a Rate or Tax on all the Inhabitants of the ſaid Pariſh, for the reimburſing and diſcharging of his Charges and Expences in conveying the ſaid*, &c. *to Gaol, according to the Direction of the Act of Parliament in that Caſe made, they have refuſed to make the ſaid Rate, whereby the ſaid* A. B. *is in Danger of loſing the ſaid* 20 s. *by him expended as aforeſaid: Theſe are therefore in his Majeſty's Name to require you, or the greater Number of you, who ſhall meet together upon Notice of this Precept, to examine the Accounts of the ſaid* A. B. *And if you ſhall find his ſaid Account to be true, and the Expences neceſſary, then you do forthwith tax every Inhabitant within the Pariſh, in ſeveral and proportionable Sums, in the whole amounting to the ſaid Sum of* 20 s. *And we do alſo hereby impower the ſaid Conſtable to demand and receive the reſpective Sums ſo aſſeſſed; and if any Perſon ſo taxed, refuſe to pay the ſame, that then the ſaid Conſtable do levy the ſame by Diſtreſs and Sale of the Goods of the Perſon ſo refuſing.* Given, *&c.*

The Names of the Perſons refuſing to pay the Tax, being return'd by the Conſtable to the Juſtices of Peace, then they may iſſue forth a Warrant to appear and ſhew Cauſe why they refuſe to pay.

If they appear, then two Juſtices may bind them over to appear at the Seſſions, if they think fit ſo to do.

When they appear at the Seſſions, they may be preſented and indicted there, ſetting forth, That the Aſſeſſment was reaſonable, and it muſt appear to be for a Conſtable's Rate, and conclude, *contra formam Statuti.*

If they refuſe to appear upon Notice, then the Juſtices may iſſue forth a Warrant to appear.

If they appear before the Juſtices, and they do not think it expedient to bind them over to the Seſſions, then they may grant.

A Warrant to diſtrain, *&c.* for the Charges as followeth.

Eſſex, ſſ. *WHereas it appeareth to us upon the Complaint of* G. C. *late Conſtable of the ſaid Pariſh, That* B. D. *and* C. P. *Inhabitants of the aforeſaid Pariſh, have refuſed to pay the Sums herein after-written, That is to ſay, the ſaid* B. D. *hath refuſed to pay* 2 s. *and the ſaid* C. P. 2 s. 6 d. *being ſeverally aſſeſſed upon them towards the reimburſing ſuch Charges which the ſaid* G. C. *hath neceſſarily expended in the Execution of his ſaid Office: Theſe are therefore to require you to levy the ſaid reſpective Sums ſo aſſeſſed upon the ſaid Perſons, by Diſtreſs and Sale of their reſpective Goods, rendring to them the Overplus, if any ſhall be.* Given, *&c.*

The Inhabitants of *Derby* were indicted for refuſing to meet and make a Rate upon the ſeveral Pariſhes in *Derby* to pay the Conſtables Tax; 'Twas objected, that the Statute only ſays they may; *ſed non allocatur*; for *may* in the Caſe of a Publick Officer is *tantamount* to *ſhall*, *Skinner* 370. *The King* againſt the Inhabitants of *Derby*.

If the Conſtable doth not cauſe Rogues and Vagabonds to be whipp'd, then the Juſtice may ſend a Warrant to levy the Penalty of 10 *s.* for every Default.

The Confeſſion of the Party, or Proof by two Witneſſes, before two Juſtices, is a Conviction. The ten Shillings muſt go to the Poor of the Pariſh, or to the Maintenance of the Houſe of Corrections, as the Juſtices of the Peace ſhall think fit.

A Warrant

A Warrant to make a privy Search.

Eſſex, ſſ. *THeſe are to authorize and require you to call to your Aſſiſtance ſome ſufficient Men of your Neighbourhood, and that in one Night before the 10th Day of this Inſtant* May, *you make a privy Search in all ſuſpicious Places within your Precinct, to find out and apprehend Rogues, Vagabonds, and other ſuſpicious Perſons there; and that you cauſe ſuch as you ſhall ſo find, to be brought before us* C. B. *and* F. G. *two of His Majeſty's Juſtices of the Peace for the ſaid County, at the Houſe of* J. G. *in* L. *in the County aforeſaid, on* Thurſday *the 10th of* May *aforeſaid, to be examined and puniſhed as we ſhall ſee Cauſe, and that you appear there likewiſe to give an Account touching the Premiſſes.* Given, *&c.* 12 Ann. c. 23. Seſſ. 2.

The Juſtices muſt meet twice a Year to execute this Statute, and the Warrant above-written muſt be ſent to the Conſtable five Days before their Meeting; and if the Conſtable ſhall not appear at that Meeting, or not give an Account upon Oath (when he doth appear) what Rogues he hath taken; or if he doth not convey to the Houſe of Correction ſuch of them as the Juſtices of Peace ſhall commit, he may be fined any Sum under 40*s.*

A Warrant from a High Conſtable to Petty Conſtables, to make a privy Search.

BY Virtue of a Warrant to me directed from P. B. *and* S. C. *Eſqrs. two of His Majeſty's Juſtices of the Peace for the County of,* &c. *aforeſaid: Theſe are to command you to make diligent Search and Enquiry within your Precincts, upon,* &c. *next, in the Night time, after all Rogues, Vagabonds, and ſturdy Beggars, and all ſuch Perſons as are ſuſpected to keep Bawdy-houſes, and the Frequenters thereof; and alſo after all Diſturbers of the Peace, and to apprehend and bring them before us at,* &c. *upon,* &c. *next, by ten of the Clock in the Forenoon, to be dealt with according to Law. Hereof fail not.* Dated, *&c.*

Warrant

Warrant to the High Conſtable to apprehend the Petty Conſtable for Breach of the Peace.

Berks, ſſ. *WHereas Complaint hath been made before me by* R. E. *of* D. *in the ſaid County of* Berks, *Gent. that* W. W. *of* D. *aforeſaid, Taylor, Conſtable of the ſaid Pariſh, hath committed a notorious Breach of the Peace on the Perſon of the ſaid* R. E. *by beating and abuſing him when he had him in his Cuſtody, on the 5th of this inſtant* November, *and was then alſo guilty of profane Swearing and Curſing: Theſe are therefore in his Majeſty's Name to require and authorize you, and either of you, to apprehend the ſaid* W. W. *and bring him before me, or ſome other of his Majeſty's Juſtices of the Peace to be examined concerning the Premiſſes, and to be further dealt with according to Law.* Given *under my Hand and Seal this 6th Day of* November, 1731.

Indictments againſt Conſtables.

For an Eſcape.

Eſſex, ſſ. JUR', &c. quod cum quidam A. B. nuper de K. in Com' prēd Agricola pro furatione equi R. B. capt' & arreſtat' fuit & poſtea ſcilt' 30 die Aprilis Anno, &c. apud K. prēd per J. S. Ar' un' Juſtic' dicti Dom' Regis ad pacem in Com' prēd conſervand' aſſign' commiſſus fuit in cuſtodiam R. G. adtunc conſtabular' ville de K. prēd ad Gaolam in Com' prēd conducend' & quod prēd R. G. adtunc & ibidem prēfat' A. B. in cuſtodia ſua habuit pro felonia prēd & poſtea prēd 30 die Aprilis, Anno ſupradicto apud L. prēd in Com' prēd ipſum A. B. a cuſtodia ipſius R. G. voluntarie & felonice ad largum ire permiſit contra pacem dicti Domini Regis Coron' & Dignitat' ſuas.

For refuſing to execute a Juſtice's Warrant.

Eſſex, ſſ. JUR', &c. quod cum R. B. Arminer, unus Juſticiariorum Dom' Reg' nunc ad pacem in Com' S. conſervand' aſſign' per præceptum ſuum manu & ſigillis ſuis præpriis ſignat' & ſigillat'

& sigillat' dat' primo die Julii, &c. Ann', &c. omnibus & singulis Constabulariis & aliis Officiariis dict' Dom' Reg' Com' S. pred' direct' mandavit eisdem Constabulariis & Officiariis & cuilibet eorum quod caperent aut ecp aliquis caperet J. O. (Here recite the Warrant, which if it be to find Sureties, &c.) ad inveniend' Securitatem pacis erga dict' Dom' Reg' & cunctum populum suum & precipue erga R. N. quod quidem preceptum postea scilicet die, &c. Anno, &c. apud H. in Com' pred' deliberat' fuit J. O. adtunc Constabulario de H. pred' in forma juris exequend' pred' tamen J. O. debitum suum in hac parte parvi pendens a pred' primo die Julii Anno supradicto, usque diem captionis hujus inquisitionis apud Parochiam pred' in Com' pred' in executione Officii sui circa premissa remisse & negligenter se habuit, & executionem precept' pred' p tempus pred' totaliter neglexit & contemptuose recusavit contra debitum Officii sui in hac parte in Contemptum dict' Dom' Reg' nunc, & Legum suarum ad magnum retardationem Justitie, & contra Pacem, &c.

N. B. The Indictment must set forth the Nature and Tenour of the Warrant, or else 'tis not good. 1 *Vent.* 325.

For not raising Hue and Cry.

JUR', &c. quod die, &c. Anno, &c. apud H. in Com' S. quidam Malefactores ignoti in quendam R. N. Yeoman, vi & armis insultum fecerunt & quinque libras in pecuniis numeratis de denariis ipsius R. N. propriis ibidem invent' felonice ceperunt & asportaverunt super quo pred' R. N. instanter eodem die & anno supradictis venit ad villam de' B. in Com' pred' & tunc & ibidem notitiam dedit cuidam J. O. Constabulario ville de B. pred' adtunc existen' quod pred' Malefactores feloniam pred' modo & forma pred' perpetrallent & adtunc & ibidem requisivit pred' J. O. hutesiam & clamorem vers. pred' Malefactores recenter levare, & quod daret in mandatis inhabitantibus Ville de B. pred' ad prosequend' hujusmodi hutesiam & clamorem prout de jure & per legem terre prosequi debeant pred' tamen J. O. debitam executionem Officii sui p' in hac parte minime curans hujusmodi hutesiam & clamorem non levavit nec mandavit inhabitantibus pred' nec eorum alicui recenter prosequi hujusmodi

hutesiam

huteſiam & clamorem ſeu ad hoc faciend' tunc & ibidem totaliter recuſavit & neglexit in malum exemplum aliorum Dom' Reg' ſubditorum & contra pacem dict' Dom' Reg. nunc coronam & dignitatem ſuas & contra formam Statuti in huiuſmodi caſu edit' & provis'.

Againſt thoſe who refuſe to follow the Hue and Cry, being commanded by the Conſtable.

JU R' &c. (as in the former Precedent to the Word levare then write thus) Et ſuper hoc præd' J. O. die & Anno ſupradictis apud B. præd' verſus præfat' Malefactores huteſiam & clamorem levavit prout de jure debuit & adtunc & ibidem mandavit & appunctuavit T. P. de B. præd' Yeoman, & G. E. de eodem Agricolam huteſiam & clamorem præd' proſequi præd' tamen T. P. & G. E. huteſiam & clamorem præd' proſequi apud B. præd' die & Anno ſupradictis omnino recuſaver' & neglexerunt in contemptum dict. Dom. Reg' & contra pacem ſuam, &c.

Againſt thoſe who refuſe to aſſiſt him to apprehend a Felon.

Eſſex, ſſ. JU R', &c. quod J. S. de H. in Com' præd' Labourer, Die, &c. Anno, &c. apud H. præd' in com' præd' unam Vaccam de bonis & catallis cujuſdam G. E. felonice cepit & abduxit, cumque etiam J. O. Conſtabularius Ville de H. præd' die, &c. Anno, &c. apud H. præd' mandavit & requiſivit F. P. de H. præd' & G. B. de eodem Yeoman, ad auxiliand' ipſum J. O. adtunc Conſtabular' de H. præd' exiſten' præd' (the Felon) pro felonia præd' arreſtare & capere præd' tamen T. P. & G. E. Die & Anno ſupradictis apud H. predict' hoc facere omnino recuſaver' & quilibet eorum recuſavit in contemptum Dom. Reg. nunc & contra Pacem, &c.

The like may be for refuſing to aſſiſt a Conſtable to convey Priſoners to the Gaol, or to bring them before a Juſtice of the Peace, &c.

Convicts.

PErsons convicted, having the Benefit of Clergy, and being committed to the House of Correction, for not less than six Months, nor more than two Years, by two Justices, and escaping out of Prison, and being retaken, shall be recommitted, and kept to hard Labour, for not less than twelve Months, nor more than four Years, without Bail or Mainprize. 5 *Ann. c.* 8.

Persons convicted escaping, to be recommitted for 4 Years without Bail.

Corn. Vid. Transportation.

NO Person shall transport Corn, Victuals, or Wood, without License, unless when sold at such Prices as are expressed in the Act. Justices at Quarter-Sessions to hear and determine Offences. 1 & 2 *P. & M. c.* 5. 1 *Ja.* 1. *c.* 25. 3 *Ja.* 1. *c.* 11.

Corn not to be transported.

See the Power of Justices at their Quarter-Sessions next after *Michaelmas* and *Easter*, and in *London* in *October* and *April*, by the Mayor, Aldermen, and Justices there, concerning foreign Corn imported. 1 *Ja.* 2. *c.* 19.

See 1 *W. & M. c.* 12. for encouraging the Exportation of Corn, when at such Prices as in the Act is expressed.

Bounty Money given for transporting Corn.

By Statute 11 *W.* 3. *c.* 1. the Bounty Money allow'd upon the Exportation of Corn, by the Act of 1 *W. & M.* c. 12. is taken away after the 29th of *February*, 1699, till the 29th of *September*, 1700.

Bounty Money taken away, &c.

Coroner.

BY 14 *Edw.* 3. *c.* 8. A Coroner shall have Sufficient in the County whereof to answer all People.

Coroners, how to be chosen.

By 28 *Edw.* 3. *c.* 6. Coroners shall be chosen in the full Counties, of the most convenient and lawful Men, saving to the King, and other Lords (who may make Coroners) their *Franchises.*

By Virtue of a Writ *de Coronatore Eligendo*, directed to the Sheriff, he is to be chosen by the Freeholders of the County, and the Sheriff, after the Day of Election,

ction, is to certify it, and the Name of the Perſon choſen, &c. *F. N. B.* 163. He is likewiſe to adminiſter the Oath of Office to him. The Number of Coroners in Counties is uncertain, but in moſt Counties there are uſually four Coroners.

And as a Coroner is choſe by the Writ *de Coronatore Eligendo*, ſo by the Writ *de Coronatore Exonerando*, a Coroner may be diſcharged for Negligence or Inſufficiency in the Diſcharge of his Duty.

And becauſe he is elected by the Freeholders, his Office is not determined by the Demiſe of the King. 1 *Levinz* 120.

He is to enquire ſuper viſum corporis.

He is to enquire *ſuper viſum Corporis* how the Perſon was killed, and by whom, and what Goods and Chattels he had at the Time of the Fact committed.

If the Body cannot be found, then he has no Authority, but in ſuch Caſes the Matter may be preſented to the Juſtices in their Quarter-Seſſions, and there found by the Jury, and this will entitle the King to a Forfeiture of the Goods. 1 *Roll. Rep.* 217. *Noy* 87. *Poph.* 209. But this is traverſable. 2 *Levinz* 141.

Muſt take Depoſitions in Writing.

He muſt take the Depoſitions of Witneſſes in Writing, atteſted under their Hands, and may bind them over to the next Gaol-Delivery to give Evidence, &c.

May adjourn the Jury.

If the Jury by him impanell'd is ſworn, and the Witneſſes not ready, he may then adjourn them, and bind them by Recognizance to appear again.

Muſt make his Precept to the Conſtable to ſummon a Jury, &c.

When he hath Notice given to view the Body, he muſt make a Precept directed to the Conſtable where it lieth, to ſummon twenty-four Men (who are to be of the Jury) to appear before him at a certain Day and Place, to execute ſuch Things as ſhall be given to them in Charge.

Vill amerced.

If the Body is buried before he comes, the Vill muſt be amerced, and he may dig it up again; the Vill may alſo be amerced for neglecting to ſend for him till the Body is putrified.

An Information was brought by the Maſter of the Crown-Office, againſt the Debtor of a *Felo de ſe*, the Money being by that means forfeited to the King; if the Subſtance of the Inquiſition be not ſet forth in the Information, 'tis void. 2 *Saund.* 27.

Coroner may order dead to be digg'd up.

He may cauſe the dead Body to be digged up again, ſoon after 'tis buried, but not at a great Diſtance of Time, tho' it was ſo done in one *Barkley*'s Caſe, but not without Leave of the Court. *Sid.* 101.

He may find any Nuſance which occaſion'd the Death of a Man, as that a Bridge is in Decay, and by reaſon of a Breach, the Perſon fell in and was drowned, and the Town ſhall be amerced. 1 *Allen* 52.

He is a Judicial Officer, and therefore cannot make a Deputy; beſides by the Statute called *Officium Coronatoris*, 3 *Edw.* 1. he is obliged *ſtatim accedere ad occiſos*, ſo that he ought to ſee the dead Body, and an Inquiſition otherwiſe taken is void. *Staundford's Pl. Coron.* 51. Coroner can't make a Deputy.

By Statute of 3 *Hen.* 7. he is impower'd, upon View of the Body, to take 13 *s.* 4 *d.* of the Slayer; if he has none, and is fled, then he may amerce the Town for ſuffering the Criminal to eſcape, and take that Fee out of the Amerciament; but he cannot demand any Fee upon the View of a Perſon kill'd by Misfortune, on Pain to forfeit 40 *s.* 1 *H.* 8. *c.* 7. May take 13 *s.* 4 *d.* Fee. 1 H 8. ch. 7. 2 Inſt. 176.

If he does not come, having Notice of the Death of any Perſon, he may be fined and impriſon'd by the Juſtices; as alſo for not binding over Witneſſes to the next Gaol-Delivery; for not certifying his Recognizances, and the Evidence, and the Inquiſition taken before him. Coroner fined for neglect of Duty.

An Information for *felo de ſe*, Forfeitures muſt ſet forth the Inquiſition. 1 *Saund.* 275. 2 *Saund.* 27.

He is to take an Inquiſition upon Flight of the Felon, to intitle the King to a Forfeiture. 5 *Rep.* 109. *B.*

But this muſt be within his proper Juriſdiction in the County; for if any Body be kill'd within the Verge of the King's Houſe, or Court, the Coroner thereof hath an exempt Power. 4 *Rep.* 45.

If there is any Practice with him, to ſuppreſs the Evidence for the King, *B. R.* may ſet aſide the Inquiſition, upon a *Male ſe geſſit*; and if he omit, or neglect to enquire, *B. R.* as ſupreme Coroner may do it, or appoint Commiſſioners, but then it muſt be *ſuper viſum Corporis*, if done by Commiſſioners. 1 *Vent.* 182. 1 *Salk.* 190. B. R. may ſet aſide his Inquiſition.

A *Melius Inquirendum* is never granted after an Inquiſition *ſuper viſum Corporis* is filed, unleſs it be quaſh'd upon Oath made of a Miſdemeanour in the Coroner or Jury; as that they did not go according to their Evidence, &c. 1 *Mod.* 82. 3 *Mod.* 80, 258. Melius Inquirendum never granted till after inquiſition quaſh'd.

And in ſome Caſes it may go to the Sheriff, as if the Coroner *ſuper viſum Corporis* find that the Man *fortuito* fell into a Pit, &c. Yet there may go a *Melius Inquirend.* to the Sheriff, to enquire of the Death, &c. and what Goods and Chattels he had at that Time.

By the Statute 4 *Edw.* 1. the Inquiſition ſhould be taken *ſuper Sacram. &c. Hominum villarum prox. adjacen.* but it was *ſuper Sacram. &c. proborum & legalium hominum de parochia, &c.* yet it was held good. *Sid.* 204. *Latch* 166.

Matters of Form may be mended.

Matters of Form may be amended, as *ſeipſum felonice ſubmerſus fuit*, it ſhould be, *jecit ſeipſum in Aquam & ibid. ſeipſum merſit.* Sid. 259. 1 Vent. 182, 352. Cro. El. 371. Sid. 204, 259. Latch 166.

If he return *fugam fecit*, it is not traverſable; but if he find the Perſon *felo de ſe*, it may be traverſed. 2 *Levinz* 152. 2 *Vent.* 178, 352.

He is a Miniſterial as well as a Judicial Officer.

He is a Miniſterial as well as a Judicial Officer, and therefore where an Exception is to the Sheriff, or any Default is in him, the Coroner ſhall return the Proceſs; as a Writ of Covenant, in a Fine, a *Venire Facias, &c.*

But then, if the original Proceſs is directed to him, all other Proceſs in the ſame Suit muſt be ſo likewiſe, tho' another and more indifferent Sheriff be appointed while that Suit is depending.

And if ſuch Proceſs is returned *Coronatoribus*, it hath been held two may return it, tho' there are more in the County, but one cannot; for in this Caſe they are but as one Officer, and therefore if one arreſts a Debtor, and he eſcapes, the Action ſhall be brought againſt both. 3 *Levinz* 399.

Where Coroners are authoriz'd to act miniſterially, their Acts are void, if they do not all join. *Hob. Rep.* 70. 2 *Hawk. P. C.* 52. And an Outlawry may be revers'd, if the Name of the Coroner is not put to the Judgment. 1 *Roll. Rep.* 266.

Juſtice of Aſſize may inquire of Defaults of Coroners.

Juſtices of Aſſize, and Juſtices of the Peace, may enquire of, and determine Defaults and Extortions of Coroners.

What Qualifications a Coroner ought to have, 2 *Inſt.* 174, 175, 176.

A Coroner in one County is a Coroner in every County of *England.* Godb. 64.

If a Man drown himſelf, and cannot be found, the Inquiſition is to be found before a Juſtice of Peace, and not a Coroner. *Pop.* 208. *Latch* 166.

Where one is Felo de ſe.

If a Man voluntarily murder or kill himſelf by any Means or Way, he is a *Felo de ſe*, and all his Goods and Chattels, and Debts due upon Specialties, are forfeited to the King, but not till his Death is found by the Coroner; but he does not forfeit his Lands, neither ſhall his Blood be corrupt. *Dalt.* 341.

A. discharges a Musket with a felonious Intent at *J. S.* and misses him, and it breaks and kills him that fired it, he is a *Felo de se.* Dalt. 104.

If an Infant, or a *Non compos mentis* kill himself, he forfeits nothing; and so a Lunatick, if the Blow, &c. (which was the Cause of his Death) be given in Time of his Lunacy, tho' he dye thereof when he is of sound Memory. *Staundf.* 19. Infant, &c. forfeit nothing.

If the Body of the *Felo de se*, be hid so that the Coroner cannot find him, to enquire of the Death *super visum Corporis*, then the Justices of Peace may enquire of the Felony, and a Presentment thereof made before them, entitles the King to the Goods, &c. *Hale's P. C.* 29.

The Lord Mayor of *London* is Coroner there. 1 *Cro.* 531. Lord Mayor is Coroner in London.

The Chief Justice of the *K. B.* is sovereign Coroner for all *England.* 4 *Co.* 57.

One Person may be Coroner of the King's House within the Verge, and of the County too. 4 *Co.* 46. *b.*

The Coroner is to have *visum Corporis* of a Prisoner dying in Gaol by reason of the Gaoler's ill Usage. 3 *Inst.* 91.

The Inquest before the Coroner is to be of Persons within the four next adjacent Vills, made by the Bailiffs, or Constables, and no Challenge to any of such Inquest. 1 *Cro.* 135.

The Power of Coroners extends not to Offences committed on the Sea; or between high and low Watermark when the Tide is in, tho' in Arms and Creeks of the Sea they have Jurisdiction. 3 *Inst.* 134. A Coroner *super visum Corporis*, 'tis said cannot make Inquisition of an Accessary after the Murder, but he may of Accessaries before the Fact. *Moor Rep.* 29.

A Coroner may be removed for being *minus Idoneus.* 5 Co. 58. b. How a Coroner may be removed.

Coroners not doing their Duty, shall be fined and imprison'd for a Year, or three Years if he cannot pay the Fine by 3 *Eliz.*

Coroners ought to certify their Inquisitions at the General Gaol-Delivery, and not at the Sessions. 1 & 2 *P. & M.* 13 *Lamb.* 365. Coroners ought to certify to Gaol-Delivery, and not Sessions.

Coroners being Parties to the Exigents and Judges of the Outlawry, ought to be present at the Sessions.

No Traverse to an Indictment before the Coroner *super visum Corporis.* 3 Inst. 55.

Coroners may be convicted of Offences against the Statute of 1 *Hen.* 8. *c.* 7. by Examination of Witnesses, and touching Extortion, or not executing their Offices before a Justice of Peace. *Cro.* 130. *b. Lamb.* 434.

An Inquisition for Murder *super visum Corporis.*

Essex, ss. Inquisitio indentat' capt' apud L. in Com' prēd' coram me P. G. un' Coronator' Dom. Reg. pro Com' prēd' die Veneris 20 die Aprilis, Anno, &c. super visum Corporis C. B. apud L. prēd' felonice interfect' adtunc & ibid' mortui jacentis super sacram' proborum & legalium hominum Ville de L. prēd' & trium aliarum Villarum propinquarum viz. Bascomb, Ringmere, & Malling, prout Moris est ad inquirend' qualiter & quo modo prēd' C. B. ad mortem suam devenit viz. super sacram' (of the Jury) qui dicunt super sacram' suam quod prēd' C. B. die Anno & loco suprad' circa horam primam post Meridiem prēd' die Veneris fuit in pace Dei & dict' Dom' Reg' nunc apud L. prēd' & adtunc & ibidem venit P. S. super de L. prēd' gen' Felonice & ut felo dicti Dom' Reg. nunc & ex malitia sua premedit' die Anno hora & loco suprad' in prēd' C. B. in Com' prēd' insultum fecit & eundem C. B. cum quodam Gladio pretii duorum solidorum quem idem P. S. ad tunc & ibid' in manu sua dextra tenuit super dextram partem Pectoris percussit & pupugit & plagam mortalem eidem C. B. dedit de qua quidem plaga prefat' C. B. instanter obiit & sic prēd' P. S. prefat' C. B. adtunc & ibidem Felonice interfecit & murdrabit contra pacem dict' Dom. Reg. Coronam & Dignitat' suas & ulterius Jur' prēd' super sacram' suum prēd' dicunt quod T. F. de N. prēd' C. T. de, &c. tempore felonie & murdri prēd' in forma prēd' fact' fuit die Veneris prēd' 20 die Aprilis Anno, &c. apud L. prēd' in Com' prēd' circa horam primam post Meridiem ejusdem diei felonice fuerunt presentes cum Gladiis strictis & adtunc & ibidem auxiliantes confortantes & manutenen' prefat' P. S. ad Feloniam & Murdrum prēd' in forma prēd' faciend' & perpetrand' contra pacem dict' Dom. Reg. Coron' & dignitat' suas ac insuper Jur' prēd' super sacram' suum prēd' dicunt quod prefat' T. F. de N. & C. T. non habuerunt nec eorum aliquis habuit ulla bona seu catalla terras vel tenemen' ad eorum notitiam in Com' prēd' tempore felonie & murdri prēd' fact'. In cujus rei Testimonium, &c.

If

If by Drowning, then ſay,

In quodam Flumine (or as the Caſe is) ibidem vocat', &c. ſeipſum voluntarie & felonice * merſit & ſic, &c.

* If it had been emergit, 'tis naught. 2 Lev. 141. 3 Mod. 103.

Upon one *non compos mentis.*

Eſſex, ſſ. INquiſitio, &c. qui dicunt ſuper ſacram' ſuum præd' quod C. S. die & Anno ſupradictis & diu antea ſcil. a primo die Junii Anno, &c. uſque ad dictum diem exiſtens Lunaticus & non compos mentis ſolus venit ad quendam pontem, vocat' &c. & adtunc & ibid' ſeipſum a ponte præd' in aquam projecit & voluntarie & felonice ſe ipſum merſit & ſic, &c.

Upon one who died in Priſon.

Middleſex, ſſ. INquiſitio, &c. qui dicunt ſuper ſacram' ſuum quod præd' A. C. qui antea commiſſus fuit ad Gaolam per C. B. Baronet' pro ſuſpicione cujusdam felonie per præfat' A. C. perpetrat' in dicta Gaola die & Anno ſupradictis ex viſitatione Dei obiit & ſic Jur' præd' ſuper ſacram' ſuum dicunt quod præd' A. C. ad mortem ſuam modo & forma præd' devenit & non aliter in cujus rei Teſtimonium, &c.

Coſts.

PErſons order'd to pay Coſts dwelling out of the Juriſdiction of the Court which gave the Coſts, upon Requeſt, and producing a true Copy of the Order for Coſts, by Oath of one Witneſs, ſhall be made to pay ſuch Coſts by one Juſtice of the County where the ſaid Perſon dwells, on Refuſal Diſtreſs and Sale; for want, to be committed for twenty Days. 8 & 9 W. 3. c. 30.

Cottages

Cottages and Inmates.

The Penalty of erecting a Cottage without 4 Acres of Land to it.

A Cottage is a Houſe erected ſince the Statute, not having four Acres of Land in Fee-ſimple, or in Tail laid to it, and near it, and which is uſually occupied with it.

Perſons erecting a Cottage without four Acres of Freehold near to it, and to be conſtantly occupied therewith, forfeit 10*l.* to the King, for continuing it, 40*s.* to the King for every Month. Owner or Occupier of a Cottage, ſuffering any more Families than one to dwell there, forfeits 10*s.* a Month to the Lord of the Leet. Lords of Leets, and their Stewards, ſhall enquire, and Preſentments take by Oath of the Jurors, of Offences againſt this Act, and may levy the Forfeitures by Diſtreſs. Juſtices at Quarter-Seſſions may alſo hear and determine Offences. This Act extends not to Cottages in Cities, &c. or for Labourers in Mines within a Mile of the Sea, or for Sea-faring Men within a Mile of the Sea, or navigable River, or for Keepers of Warrens, Shepherds, or Herdſmen, or an impotent Perſon, or to Cottages decreed to continue for Habitation, by Order of Juſtices of Aſſize, or Seſſions. 31 *Eliz. c.* 7.

If a Cottage was built before the Statute of 31 *El. c.* 7. and afterward converted into two Dwelling-Houſes without four Acres of Land, both are Cottages.

If a new Houſe is built ſince the Statute, upon an old Foundation before, 'tis a Cottage.

If the Land is ſold from the Houſe, or that from the Land, 'tis a Cottage.

But if a new Houſe be built upon an old Foundation before the Statute, 'tis no Cottage.

Whether a Cottage hath four Acres, or not; or whether 'tis in City or Borough, there muſt be no Inmates under Penalty of 10*s. per* Month, which the Owner or Occupier of the Cottage muſt pay to the Lord of the Leet.

It muſt be preſented by the Jury upon their own Knowledge, or an Indictment may be found by them. In either of theſe Caſes the Lord hath a Title, or may Diſtrain, ſo as to bring an Action of Debt for the Forfeiture, or to levy it by a *Fieri facias*, directed by his Steward to the Bailiff of the Manor. *Co. Ent.* 666.

The

The Indictment for erecting of a Cottage must conclude *contra formam Statuti*, and likewise *contra pacem*, or otherwise may be quash'd. If it be for erecting *unum Messuagium pro habitatione*, and not laying four Acres of Land, 'tis good, tho' he doth not say it is inhabited. *Roll's Abr.* 2. P. 80. 2 *Roll's Rep.* 38. *Sid.* 359. 1 *Mod.* 295. 1 *Vent.* 107. for building is not an Offence, as in 2 *Bulst.* 264. But it must be shewed, That the Building was *pro habitatione*, these being the very Words which create the Offence. 1 *Vent.* 107. *Godb.* 383.

How the Indictment must conclude.

The Indictment was *per Juratores præsentatum existit*, that the Defendant had erected a Cottage, & *ulterius præsentant quod continuavit*, &c. *contra formam Statuti*, after a Verdict it was reversed by Writ of Error, because there was no *Nominative Case* to agree with the Verb *præsentant*, for the Continuing the Cottage is a new Indictment, distinct from the first, and therefore *Juratores* in that Case shall not relate to this. *Mich.* 6 *W.* & *M.* B. R. *Mod. Rep.* 4. P. 315, 345. *Rex* & *Regina* ver. *Tarbridge.* Godb. 308. *Style p.* 33.

There cannot be a joint Indictment against several, it must be several against every Person who suffers Inmates in their Houses. 2 *Roll's Rep.* 164.

Cannot be a joint Indictment against several for having Inmates.

A Cottage may be erected on the Waste at the Charge of the Parish, for poor impotent Persons, by the Church-wardens and Overseers of the Poor, or the major Part of them, having obtained Leave of the Lord of the Manor in Writing under Hand and Seal; but then this must be confirmed by the Justices in Sessions. And if the Lord of the Manor will not give Leave, the Sessions alone may tolerate a Cottage for a particular Time.

The Lord's Consent to the Erecting of a Cottage.

UPON the Petition of A. B. *and the Certificate of the Inhabitants of the Parish of*, &c. *I do hereby give my Consent, being Lord of the Manor of*, &c. *aforesaid, That the said* A. B. *shall and may erect and set up a Cottage for his Habitation in some convenient Place on the Waste within the Parish aforesaid, to be assigned by my Steward, provided that an Order of Sessions be procured according to Law, for Confirmation thereof.* Witness *my Hand*, &c.

A Po-

A Petition to Juſtices of the Peace in the Quarter-Seſſions for erecting of a Cottage.

To the Worſhipful the Juſtices of the Peace, at the General Quarter-Seſſions of the Peace, to be holden at, &c. *in the County of,* &c. *on,* &c.

The humble Petition of *A. B.* Labourer,

Sheweth,

THAT whereas your Petitioner, being with his Wife and Children ſettled as an Inhabitant of and in the ſaid Pariſh of, &c. *and at preſent deſtitute of an Habitation, hath by Addreſs made to C. T. Eſq; Lord of the Manor of,* &c. *aforeſaid, obtained his Conſent under his Hand and Seal, for your Petitioner to erect and ſet up a Cottage on the Waſte within the Pariſh of,* &c. *aforeſaid, for an Habitation for himſelf and his Family, if an Order of Seſſions can be obtained for Confirmation thereof, as by the Paper hereto annexed doth appear.*

May You therefore be pleaſed to grant unto your poor Petitioner the Order of this Court, whereby your ſaid Petitioner may be enabled to ſet up a Cottage for an Habitation for himſelf and poor Family, on ſome convenient Place on the Waſte within the Manor, of, &c. *aforeſaid, to be aſſigned by the ſaid* C. T. *or his Steward.*

And your Petitioner ſhall ever pray, &c.

An Order of Seſſions for erecting a Cottage.

Ad Generalem Quarterial' Seſſion' Pacis, &c. Tent' &c.

Eſſex, ſſ. *WHereas* A. B. *of,* &c. *Labourer, hath obtained Conſent of* C. T. *Eſq; Lord of the Manor of,* &c. *in the County aforeſaid, to erect and ſet*

up a Cottage, for an Habitation for himself and Family, in some convenient Place on the Waste in the Parish of, &c. aforesaid, provided an Order of Sessions be procured for the Confirmation thereof; And the said A. B. having humbly petitioned and besought us to grant such an Order, We do therefore hereby Order and give our Consent that the said A. B. shall and may erect and set up a Cottage for the Habitation of himself and Family, on some Place in the Waste in the Parish of, &c. aforesaid, according to his Petition, and the Consent of the said C. T. In Witness, &c.

Indictment for building a Cottage.

Middlesex, ss. JURR' &c. quod C. P. de M. in Com' pred' Scissor 30 die Junii, Anno Reg. &c. apud M. pred' in Com' pred' quoddam Cotagium pro habitatione erexit & adtunc & ibidem per spacium decem Mensium & amplius dict' Cotagium sic erect' pro habitatione voluntarie sustinuit, continuavit & manutenuit ubi revera quatuor acre terre mensurand' secundum formam Statut' de libero Tenemento suo cum dicto Cotagio continue occupand' nunquam fuerunt adject' vel assignat' contra formam Statut. in hujusmodi casu edit' & provis. nec non contra pacem, &c.

County-Court.

SHeriff, Under-Sheriff, or Sheriff's Clerk, entring Plaint in County-Court, in Absence of the Plaintiff, or his Attorney, or above one Plaint in one Cause, they or the Plaintiff may be examined by a Justice of Peace, and he shall certify that Examination three Months afterwards into the Exchequer, and the Offender must pay 40 s. to the King and Prosecutor.

Sheriff must issue Estreats out of the County-Court. Two Justices (*Quorum unus*) shall view them, and there must be two Parts indented and sealed by the two Justices, and Sheriff, and one of them must remain with the Sheriff. 11 *H.* 7. *c.* 1, 15.

Customs

Customs and Custom-house Officers. Vide Smuglers.

CUSTOM is a Duty paid to the King on the Importation or Exportation of Merchandize.

Persons running Goods.

If any Person shall cause any Goods for which Custom is to be paid, to be landed or convey'd away without Entry made, and the Collectors of the Customs agreed with; the chief Magistrate of the Port, or the Place next adjoining, may at any Time (within a Month after the Offence) issue out a Warrant for any Person with the Assistance of a Constable, &c. to enter the House in the Day-time, where the Goods are suspected to be concealed, and in Case of Resistance to break open the House, and seize the Goods.

But there must be Information on Oath first given to the Magistrate, and if a House be searched wrongfully, the Party shall recover full Damages and Costs against such Informer.

How those who assist at running Goods are to be punished.

If a Carman or other Person shall assist in taking up, landing, shipping, or carrying away any Goods, &c. without Warrant, or an Officer of the Customs being present, and the Offence shall be proved by the Oath of two Witnesses before the Justice of the Peace, such Justice of Peace may commit such Offender 'till he find Sureties for his good Behaviour, or be discharged by Order of the Lord Treasurer, &c. and for the second Offence to be committed for two Months, or 'till he pay 5 *l.* to the Sheriff for the Use of the King, or be discharged as above. 13 & 14 *Car.* 2. *c.* 11.

Persons resisting Custom-house Officers, how punished.

If any Person resist, hinder, affront, or abuse any Officer of the Customs, or his Deputy, in the Execution of his Office, the Offender shall be committed by the next Justice, 'till the next Quarter-Sessions, where he may be fined not exceeding 100 *l.* and he is to remain in Prison 'till discharged by Order of the Exchequer, or discover the Person who employ'd him. 13 & 14 *Car.* 2. *cap.* 11.

Officers making false Certificate.

Custom-house Officers making false Certificates of Goods that should have been landed, shall lose their Employment, forfeit 50 *l.* and suffer one Year's Imprisonment; and if any Officer belonging to the Customs takes any Bribe, or connive at any false Entry, he shall forfeit 100 *l.* and be incapable of any Employment, and the Person giving such Bribe, shall forfeit 50 *l.* Persons counterfeiting or falsifying any Certificate,

tificate, Rerurn, &c. or other Custom-house Warrant, forfeit 100 *l.* and by 5 *Geo.* 1. *cap.* 11. Officers of the Customs making collusive Seizures, forfeit 500 *l.*

Captains of Men of War importing Goods, &c.

Captains and Masters, &c. of Ships of War, with Goods brought from beyond Sea, shall not unload such Wares into any Boat, Bottom, or Lighter, or lay on Land 'till Entry thereof be made at the Custom-house, on Penalty of 100 *l.*

Above eight together resisting Officer to be transported.

If any Officer of the Customs be hindred, wounded, or beaten in the Execution of his Office, by any Persons armed with Clubs, &c. to the Number of eight, or more, such Offenders shall be transported for any Term not exceeding seven Years; and if they return, they shall be guilty of Felony, and have Execution awarded against them. 6 *Geo.* 1. *cap.* 21.

But if such Offender within two Months after his Offence, and before his Conviction, shall discover two or more of his Accomplices to the Commissioners of the Customs, so as they be convicted of the said Offence, the Discoverer shall have 40 *l.* for every Offender discover'd, and shall himself be discharged.

Any other Person discovering, within three Months after the Offence, &c. shall have the like Reward of 40 *l.* to be paid by the Cashier of the Customs. 6 G. 1. *cap.* 21.

Seizures of Vessels of 15 Tons or under, to be determined by two Justices.

All Seizures of Vessels of fifteen Tuns or under, which shall be made for carrying uncustomed or prohibited Goods from Ships inwards, or for re-landing Cetificate or Debenture Goods from Ships outwards, &c. shall be determined by any two Justices of the Peace near the Place where the Seizure shall be made, who are to issue out their Summons, give publick Notice, &c. and their Judgments shall be final; and Justices of Peace of *London* and *Westminster*, have the like Power in determining such Seizures as the Justices of any other Places.

Brandy imported in a Vessel under 40 Tons forfeited, &c.

If any foreign Brandy, &c. be imported into this Kingdom in any Vessel of 40 Tons or under, (except each Seaman two Gallons) such Vessel and the Brandy, or the Value thereof shall be forfeited. Boats, Pinnaces and Barges not belonging to the King, Merchants Ships, or not licensed by the Admiralty) made to row with more than four Oars in *Middlesex*, *Surrey*, *Kent* or *Essex*, &c. are also liable to Forfeiture, and the Owners to a Penalty of 40 *l.* *Stat.* 8 G. 1. *c.* 18.

No Custom-house Officer to Merchandize or have Part of a Ship.

No Customer, Controller, Searcher, Surveyor of Searchers, or their Clerks, Deputies, Ministers, Factors, Servants shall have any Ship of their own, use Merchandize,

chandize, keep a Wharf, Inn or Tavern, or be a Factor, Attorney, or Host to a Merchant, in Pain of 40 *l.* to be divided betwixt the King and the Profecutor. 29 *H.* 6. *cap.* 5.

In every Suit wherein Officers of the Customs, or Persons authorized to put in Execution the Act of Navigation, or others acting in Aid of them, shall be profecuted; they may plead the General Issue, and give this or the said Act in Evidence.

Persons claiming Goods must give Security to pay Costs.

Any Person entring a Claim in a Court where prohibited, or uncustomed Goods are profecuted, must give Security in the Penalty of 30 *l.* to answer and pay Costs occasioned by such Claim, and in Default thereof the Goods shall be recovered. 8 *Ann. c.* 7.

Fees of Custom-house Officers allowed by 12 *Car.* 2. *cap.* 4. are continued till altered by Parliament.

Officers of Customs imbezilling any Goods lodged in any Ware-house in his Custody, forfeit double the Value to the Party grieved, with full Costs. 9 *Ann. cap.* 21.

Officers must Swear to take no more than their due Fee.

All Officers of the Customs shall take an Oath before two Justices of Peace, that they will not receive any Reward or Gratuity, other than their respective Salaries, or the regular Fees established by Law. And for neglecting or refusing to take the said Oath, shall forfeit their Office or Employment.

The Persons administring the said Oath, shall certify the same to the next General Quarter-Sessions of the Peace of the proper County there to be recorded. 6 *W.* 3. *c.* 1.

A Warrant against those who abuse or resist a Custom-house Officer, and a *Mittimus* to send the Offender to Gaol.

Essex, ss. *Whereas Complaint hath been made unto me, by* C. D. *of* R. &c. *being an Officer of His Majesty's Customs, That* L. M. *and* S. C. *of* R. *aforesaid, Yeomen, did lately with Force of Arms resist the said* C. D. *at* F. *in your County, being then in the Execution of his said Office: These are therefore in His Majesty's Name to command you the Constable of,* &c. *to apprehend the said* L. M. *and* S. C. *and to deliver them to the Keeper of the common Gaol in the said County, together with this Warrant; hereby also commanding you the said Keeper to take into your Custody the said* L. M. *and* S. C. *and them safely to keep until the next Quarter-Sessions, which shall be held for the*

the same County, there to be punished according to the Statute in that Case made and provided: And hereof fail not at your Perils. Given, &c.

A Warrant to Search for Goods (for which Custom ought to be paid) which are privately conveyed away, and concealed.

WHereas D. N. *of*, &c. *Gent. hath this Day made Information on Oath before me* T. C. *Esq*; *one of His Majesty's Justices of the Peace for this County, That on*, &c. *last past, about the Hour of Ten at Night, he saw* S. N. *of*, &c. *land at the* Key *of*, &c. *from the Ship called*, &c. *lately arrived from* Nants *in* France, *two Casks of Liquor about the Size of Quarter Barrels, and convey them to his House situate in*, &c. *aforesaid, and the said* D. N. *having searched the Custom house Books, and finding no Entry made of the said Barrels of Liquor, or any Agreement made with the Collector for the Custom thereof: And the said* S. N. *being no ways concerned by Profession, or otherwise in Foreign Liquors: And the said* D. N. *having produced a Witness to prove that he drank Brandy and Red Wine on*, &c. *last at the House of the said* S. N. *who hath proved the same accordingly; all which being considered, there is good Reason to suspect that the said* S. N. *hath concealed Liquors for which Duties are payable to the Crown, with Intent to defraud His Majesty, and contrary to an Act of Parliament in that Case made: These are therefore to command you to assist the said* D. N. *in the entring of the House, and to enter with him into the House of the said* S. N. *and search for the said Barrels of Liquor, or any other Foreign Liquors for which Custom ought to be paid, which may be concealed there; and in Case you meet with any Resistance, that you do enter the said House by Force; and if you find any such Liquors, that you do seize the same as forfeited*, &c. Given, &c. 13 & 14 Car. 2. cap. 11.

A Warrant against an Offender assisting in the Landing Goods, and carrying them away without paying Custom.

Essex, ss. *WHereas Complaint hath been made unto me, that* A. S. *of*, &c. *hath lately assisted in the Landing and Carrying away several Goods at* M. *in the said County, for which a certain Duty was due, and payable to His Majesty, which was not paid: And whereas it appeareth unto me, upon the Examination of*, &c. *and others, That* Two Witnesses, 13 & 14 Car. 2. c. 11.

That he the ſaid A. S. *had not any Warrant for his ſo doing; and that he had not given Notice thereof to any Officer of the Cuſtoms; and that no ſuch Officer was there preſent: Theſe are therefore in His Majeſty's Name to command you to apprehend the ſaid* A. S. *and bring him before me, or ſome other Juſtice of the Peace for this County, to anſwer the Premiſſes. And hereof fail not.* Given, &c.

Cutting out Tongues, &c. Vide Felony.

Deer-Stealing.

5 Eliz. c. 11. BY Stat. 5 *Eliz. c.* 11. Entring any Park to kill or chaſe Deer without Licenſe of the Owner, muſt ſuffer three Months Impriſonment, and be bound to good Behaviour for ſeven Years, beſides treble Damages to Party grieved. Offender making Acknowledgment and Satisfaction in Seſſions to Party grieved, may be releaſed.

3 Ja. 1. c. 13. By 3 *Jac.* 1. *c.* 13. Any Man convicted in the Seſſions of unlawful chaſing or killing any Deer, ſhall pay treble Damages to the Party grieved. By Stat. 7 *Jac. c.* 13. the Party might at his Choice have treble Damages, or 10 *l.* in lieu thereof, and the Offender is to ſuffer three Months Impriſonment; and afterwards to remain in Priſon 'till he found Sureties for his good Behaviour for ſeven Years. But the Party being ſatisfied, the Juſtices in Seſſions might releaſe the good Behaviour.

13 Car. 2. c. 10. By Stat. 13 *Car.* 2. *c.* 10. not only for courſing and killing, but hurting or taking away Deer in any Ground where Deer are kept, the Forfeiture is 20 *l.* one Moiety to the Informer, the other to the Owner of the Deer.

Proſecution muſt be in ſix Months by Confeſſion, or one Witneſs on Oath before one Juſtice, refuſing to pay, and for want of Diſtreſs, to be committed to the Houſe of Correction for ſix Months, or Gaol, for a Year, muſt give Security for good Behaviour for a Year.

The Offence muſt be againſt the Conſent of the Owner, or the Perſon intruſted to keep the Deer; and thoſe who are aiding and aſſiſting therein, incur the ſame Puniſhment.

By 3 & 4 *W. & M. c.* 10. 'tis 20*l.* Penalty for courſing or hunting Deer, and for taking in Toils, killing and wounding Deer, 30*l.* for every Deer ſo taken, killed or wounded, to be divided between Owner, Poor, and Informer. Proſecution within a Year before one Juſtice, Conviction by Confeſſion, or one Witneſs upon Oath, or by Verdict, *&c.* on Indictment before a Judge of Gaol-delivery; to be levied by Diſtreſs and Sale, by Warrant from one Juſtice of the County where the Fact was done, or the Offender taken, for want to be committed for a Year, and ſtand in the Pillory an Hour on a Market-day in a Town next adjoyning to, *&c.* Conſtable may by Warrant from one Juſtice ſearch Houſes, *&c.* for Veniſon, Deer-Skins or Toils; and if any found, Party not giving a good Account how he came by them, ſhall be liable to the ſame Penalties as for killing Deer. Conſtable muſt not keep the Offender in Cuſtody above two Days. 3 & 4 W. & M. c. 10.

N. B. By 5 *Eliz. c.* 21. 3 *Jac.* 1. *c.* 13. & 7 *Jac.* 1. *c.* 13. Perſons killing or chaſing Deer in the Day-time, as well as the Night, are liable as aforeſaid.

Alſo by the ſaid Statutes, Impriſonment muſt be continued if Offender can't find Sureties for his good Behaviour, as aforeſaid.

By 3 & 4 *W. & M. c.* 10. If any Perſon in the Night-time pull down or deſtroy the Pales or Walls of any Park, Foreſt, *&c.* or other Ground incloſed, where Red or Fallow Deer are kept, he ſhall ſuffer three Months Impriſonment.

One *Pennoyer* was convicted upon the Statute of Deer-ſtealing, and it appearing by the Conviction that the Deer were not in a Place incloſed, upon Motion the Conviction was quaſhed. *Mich.* 9 *W.* 3. *B. R. Rex* ver. *Pennoyer.* Pennoyer's Caſe.

The Defendant was convicted at the Seſſions, and fined for Deer ſtealing, and a Writ of Error was brought in *B. R.* and the Court was moved, that the Offender might be bailed 'till the Errors ſhould be determined; but it was denied, becauſe he was in Execution for a Fine. *Sid.* 286.

If a Gentleman licenſe another to chaſe in his Park, ſuch a Perſon cannot bring others with him to hunt there, without particular Words in the Licenſe, and a Parker and Keeper may not licenſe any one to hunt in his Maſter's Park. A Licenſe extends only to thoſe mentioned.

None ſhall keep Deer-hays, or Buck-Stalls, nor ſhall ſtalk with Buſh any Deer, except in his own 19 H. 7. c. 11.

Park, &c. under Penalty of 40 *s.* *per* Month for keeping ſuch Deer-hays, &c. and 10 *l.* for ſtalking.

Two Juſtices in Seſſions may examine the Offender, and commit him 'till he pay the Forfeiture, of which the Juſtices are to have the tenth Part. 19 *H.* 7. *cap.* 11.

By 3 *Jac.* 1. *cap.* 13. he who keeps a Gun to kill Deer, not having 40 *s.* *per Ann.* in Lands, or 200 *l.* in Goods, any Perſon having 100 *l.* *per Ann.* may take away the Gun and keep it.

5 Geo. 1. c. 15. No *Certiorari* to be allowed to Deer-Stealers to remove Conviction, &c. unleſs the Party convicted, ſhall before the Allowance of ſuch *Certiorari*, and at the ſame Time, that Security is given for Payment of Coſts and Damages to the Proſecutor, become alſo bound to the Juſtice before whom convicted, with ſuch Sureties as Juſtice ſhall approve of in the Sum of 60 *l.* for each Offence, with Condition to proſecute ſuch *Certiorari* with Effect, and to pay the ſaid Juſtice the Forfeitures due by ſuch Conviction, to be diſtributed as the ſaid Statute directs, or to render the Perſon convicted to the ſaid Juſtice within a Month after Conviction confirmed, or a *Procedendo* granted. And in Default thereof, it ſhall be lawful for the ſaid Juſtice, or all other Perſons whatſoever to execute ſuch Conviction, as if no *Certiorari* had been awarded: And after Confirmation of Conviction upon the ſaid Statute by any ſuperior Court, and delivering the Rule to the ſaid Juſtice of Conviction ſo confirmed, ſuch Juſtice may then proceed againſt the Offender, as if a *Procedendo* had been granted. Perſons convicted ſhall, before diſcharged out of Cuſtody, become bound to Perſons againſt whom Offence committed, in 50 *l.* for good Behaviour, on Refuſal ſhall be ſent to Gaol 'till Bond given. Penalties to be diſtributed as by Stat. of 3 & 4 *W.* & *M.* *c.* 10. and Parties convicted by this Stat. liable to Penalties and Forfeitures in the ſaid Statute. But nothing in this Act ſhall repeal any former Laws for Puniſhment of Deer-ſtealing, and where any Offender is puniſhed by this Act, he ſhall not be proſecuted by any other Law. 5 *Geo.* 1. *c.* 15.

Keepers of Foreſts, Parks, &c. being convicted for killing or taking any Red or Fallow Deer, or aiding therein without Owners conſent, forfeit 50 *l.* for every Deer, to be levied on Goods and Chattels, by Diſtreſs, to be diſtributed as Forfeitures in the ſaid Statute are to be diſtributed, for want of Impriſonment for three Years without Bail, &c. Set in the Pillory

Pillory two Hours on Market-day, by chief or under Officers of the Town. Perſons pulling down, &c. Park-pales, &c. in the Night, or by Day, being convicted by Oath of one Witneſs, before one Juſtice, ſhall be ſubject to the ſame Penalties in the ſaid Statute, as for killing Deer. 9 G. 1. c. 28.

By 5 *Geo.* c. 28. Perſons entring into any Park, &c. and wilfully wounding or killing any Deer without Conſent of the Owner, or Perſon intruſted with the Park, &c. or being aiding and aſſiſting in committing ſuch Offence, being indicted before any Judge or Juſtices of Gaol-Delivery, and by Verdict or Confeſſion convicted, ſhall be ſent to ſome Plantation in *America* for ſeven Years, by Order of Court to be conveyed to a Perſon who ſhall contract for Tranſportation. 5 *Geo.* c. 28. 5 Geo. c. 15. 5 Geo. c. 28.

By Stat. 8 *Geo.* c. 18. When ever any Perſon ſhall for any Offence committed againſt any Law in Being, for the better Preſervation of the Game, be liable to a Penalty upon Conviction, before a Juſtice of Peace, it ſhall be lawful to proceed to recover the ſaid Penalty, either by Information and Conviction before a Juſtice of Peace, or to ſue for the ſame by Action of Debt in any Court of Record, and the Plaintiff ſhall have double Coſts.

But the Suits and Actions to be brought are to be commenced before the End of the next Term after the Offence committed; and there muſt not be a double or ſecond Proſecution, one on this Law, and another on the Laws already in Being.

A Juſtice at Diſcretion may either grant, or not grant his Warrant to ſearch for Deer ſtolen, or for ſtolen Goods.

Note, That by 3 & 4 *W.* & *M.* c. 10. All Owners of Deer kept in any incloſed Grounds, and all Perſons acting under them, may oppoſe and reſiſt Offenders, and be thereby indemnified for ſo doing, as well as if the Fact had been committed within any ancient Foreſt, Chaſe or Park. And all Perſons for putting that Act in Execution may plead the general Iſſue, and give the ſpecial Matter in Evidence. And no Offender puniſhed by 3 & 4 *W.* & *M.* c. 10 ſhall be proſecuted on Stat. 1 *H.* 7. c. 7. or 5 *Eliz.* c. 21. or 3 *Ja.* 1. c. 13. or 13 *Car.* 2. c. 10. or on any other Statute for the ſame Offence.

Penalty of wounding or killing Deer in inclos'd Place, is Transportation.

By Stat. 9 G. 1. *c.* 28. Entring into a Park, or Paddock, or other encloſed Ground, where Deer are uſually kept, and wilfully wounding, or killing any Red or Fallow Deer there, without the Conſent of the Owner, or Perſon entruſted with the Cuſtody of the Park, or ſhall be aiding therein, and being indicted and convicted thereof by Verdict, or by his own Confeſſion, ſhall be tranſported for ſeven Years, and the Court may make over ſuch Offender to the Uſe of any Perſon who will contract for the Performance of his Tranſportation.

Not producing Party of whom Veniſon is bought is a Conviction.

If any Veniſon, or Skin of a Deer ſhall be found in the Cuſtody of any Perſon, and it ſhall appear that ſuch Perſon bought it of one who might be juſtly ſuſpected to have unlawfully come by the ſame, and does not produce the Party of whom he bought it, or prove on Oath the Name and Place of Abode of ſuch Party, then the Perſon who bought it ſhall be convicted of ſuch Offence by one or more Juſtices of the Peace, and ſhall be ſubject to the Penalties inflicted for killing a Deer, by the Act 3 & 4 *W.* & *M.* *c.* 10.

This Act at firſt was to continue in Force for three Years, from 1 *June*, 1723, and from thence to the End of the then next Seſſion, but was by 12 G. 1. continued from the Expiration thereof for the Space of five Years, and from thence to the End of the then next Seſſion of Parliament.

Caſes of Deer-Stealing.

Upon a *Certiorari* on a Conviction for Deer-ſtealing it was objected, that it appeared to be a Year after the Day of the Information; but adjudg'd that 'tis good, becauſe 'tis not from the Conviction, but from the Information, that the Time is to be computed; for if the Information is in due Time, the Conviction may be at any Time afterwards, and the Penalty need not be diſtributed by the Conviction, (*viz.*) 10*l.* to the Informer, 10*l.* to the Party grieved, and 10*l.* to the Poor; for the Judgment in ſuch Caſes ſeldom makes a Diſtribution, 'tis enough to ſay, that *Convictus eſt & ſoriſfaciat* 30*l.* *juxta formam Stat.* 1 Salk. 381.

Penalty of pulling down Pales or Wall of a Park.

Any Perſon pulling down, or cauſing to be pull'd down, a Pale or Pales, or Wall of any Park, or encloſed Place where Red or Fallow Deer are kept, without the Conſent of the Owner, and being convicted thereof by his own Confeſſion, or Oath of one Witneſs, before one Juſtice of the County where the Offence was done, ſhall be ſubject to the Forfeitures and Penalties by this Act for the killing one Deer, in

in the ſame Manner as if he had been convicted thereof.

A Defendant ſued for putting this Act, or 3 & 4 *W.* c. 10. in Execution, may plead the General Iſſue, and give the Acts and Special Matter in Evidence; and if he recover, ſhall have treble Coſts, to be recovered as any other Coſts are. Defendant may plead General Iſſue.

There were two Perſons convicted for Deer-Stealing, and Judgment was given that each of them ſhou'd forfeit 30 *l.* and this being removed into *B. R.* it was objected, that there ought to be but one 30 *l.* forfeited; but adjudg'd that the Forfeiture is not in Nature of a Satisfaction to the Party grieved, but as a Puniſhment to the Offender, and the Words of the Statute are, that they ſhall reſpectively forfeit; and Crimes are ſeveral, tho' Debts are joint.

Any Juſtice of the Peace may iſſue his Warrant to any Conſtable, Headborough, or other Peace-Officers, to enter into any Houſe to ſearch for Veniſon ſtolen, contrary to the Statutes againſt Deer Stealers, in ſuch manner as he may iſſue his Warrant to ſearch for ſtolen Goods. Any Juſtice may iſſue his Warrant to ſearch for ſtolen Veniſon.

If any Perſon ſhall apprehend, or cauſe to be convicted any of the Offenders above mentioned, and ſhall be killed or wounded, ſo as to loſe an Eye, or the Uſe of any Limb, in apprehending or endeavouring to apprehend ſuch Offenders, on Proof thereof at the General Quarter-Seſſions for the County, &c. where the Offence was committed, the Juſtices ſhall give a Certificate thereof to the Perſon ſo wounded, or the Executors, &c. of the Party ſo killed, which ſhall intitle them to receive of the Sheriff of the County 50 *l.* to be allow'd the Sheriff in paſſing his Accounts, which 50 *l.* the Sheriff is required to pay within 30 Days from the Day on which the Certificate ſhall be ſhewn him, on the Forfeiture of 10 *l.* to the Perſon to whom the Certificate is given, for which 10 *l.* as well as the 50 *l.* ſuch Perſon may bring his Action upon the Caſe againſt the Sheriff, as for Money had and received to his Uſe. Perſon killed or wounded in taking Deer-Stealer, entitled to 50 *l.* to be paid by the Sheriff.

Any Proſecution for any Offence againſt the Statute 3 & 4 *W.* & *M.* c. 10. for the more effectual Diſcovery and Puniſhment of Deer-ſtealers, ſhall be commenced within three Years from the Time of the Offence committed, but not after.

Every Offence againſt this Act may be enquir'd of, and tried in any County in *England*, as if the Fact had been Offences triable in any County in England.

been therein committed; but no Attainder for any of the Offences made Felony by this Act, ſhall make any Corruption of Blood, Loſs of Dower, or Forfeiture of Lands or Tenements, Goods or Chattels.

This Act ſhall be openly read at every Quarter-Seſſions, and at every Leet or Law-Day.

A Warrant for a Buck.

UPON Sight hereof, you are to kill and deliver to J. S. *Eſq; one fat Buck of this Seaſon, for which this ſhall be your Warrant.*

A. B.

A Warrant to apprehend a Perſon for unlawful hunting and courſing of Deer.

Eſſex, ſſ. *WHereas Complaint has been made unto me by* C. D. *of*, &c. *Keeper to the Honourable* C. *Lord* W. *that* A. B. *of*, &c. *in and upon*, &c. *laſt paſt, did unlawfully courſe and hunt ſeveral Deer in the Park of the ſaid* C. *Lord* W. *ſituate*, &c. *contrary to the Act of Parliament in that Caſe made: Theſe are therefore to require you upon Sight hereof, to apprehend the ſaid* A. B. *and to bring him before me, or ſome other of His Majeſty's Juſtices of the Peace for this County, to anſwer the Premiſſes.* Given, &c.

A Warrant againſt a Perſon for ſtealing Deer (or as the Fact is.)

3 & 4 W. & M. c. 10. one Juſtice.

Eſſex, ſſ. *WHereas it hath been duly proved before me, that* A. B. *of* M. *in the County aforeſaid, did on the* 10th *of* October *laſt paſt, unlawfully courſe (or as the Fact is) one Fallow Deer in the Park of*, &c. *without his Conſent, or the Perſon intruſted with the keeping thereof, contrary to the Statute in that Caſe made and provided: Theſe are therefore in His Majeſty's Name, to require you to levy by Diſtreſs and Sale of the Goods of the ſaid* A. B. *the Sum of* 20*l. which ſaid Sum is forfeited by him, being convicted before me for the ſaid Offence; and that you pay one*

For every Deer wounded 30 l.

third

third Part thereof to M. N. *who informed me of the ſaid Offence; and another third Part unto the Church-wardens or Overſeers of the Poor of the Pariſh of* L. *where the ſaid Offence was committed, for the Uſe of the Poor of the ſaid Pariſh; and the other Part thereof to* J. S. *the Owner of the ſaid Deer; and if no Diſtreſs can be found and taken, that then you certify the ſame to me.* Given, &c.

The like Warrant *mutatis mutandis*, for aſſiſting or aiding.

Commitment for want of Diſtreſs.

Eſſex, ſſ. *WHereas you the Conſtable,* &c. *were lately required, by Warrant under my Hand and Seal, to levy the Sum of* 20 l. *by Diſtreſs and Sale of the Goods of* A. B. *of* M. &c. *by him forfeited for an Offence, which he committed againſt the Form of the Statute made in the third and fourth Years of the late King* W. & Q. M. *intitled* (An Act, &c.) *And whereas I have been certified by you, That you cannot find a ſufficient Diſtreſs to be taken of the Goods and Chattels of the ſaid* A. B. *for the Offence aforeſaid: Theſe are therefore in His Majeſty's Name, to require you to apprehend the ſaid* A. B. *and to convey him ſafely to the Gaol of the ſaid County, and deliver him to the Keeper thereof, together with this my Warrant for your ſo doing: Requiring alſo you the aforeſaid Keeper to take into your Cuſtody the ſaid* A. B. *and him ſafely to keep for the Space of one whole Year next enſuing; and that you then deliver him to the chief Officer of* K. *being the Town next adjoining to the Place where the Offence was committed, or ſome of his under Officers, together with this Precept, who are hereby required to ſet the ſaid* A. B. *in the Pillory in the ſaid Town, on ſome Market Day, for the Space of one Hour: And hereof fail not, as you will ſeverally anſwer the contrary at your reſpective Perils.* Given, &c.

The like Warrant *mutatis mutandis*, to levy 30 *l.* for taking in Toils, and the like Commitment for want of Diſtreſs, or againſt aiding and aſſiſting.

A Warrant to make a Search for ſtolen Veniſon, and to enter Houſes of ſuſpected Perſons.

3 & 4 W. & M. cap. 10.

Eſſex, ſſ. WHereas T. C. *of*, &c. *has this Day made Complaint unto me, that ſeveral Fallow Deer have been lately unlawfully hunted, killed and carried away by Perſons unknown, in and from the Park of*, &c. *And that ſeveral Deer-Skins have been lately ſeen in your Pariſh, particularly in the Houſe of* T. P. *Labourer: Theſe are therefore in his Majeſty's Name, to Command you to enter into, and Search the Houſe of the ſaid* T. P. *and into the Houſes, Out-houſes, Yards, and other Places of ſuch other Perſons in the Pariſh whom you ſhall juſtly ſuſpect, or be informed to have any Veniſon or Skins of Deer, and to have unlawfully come by the ſame; and if you ſhall find any ſuch, then you ſhall apprehend the Perſons in whoſe Poſſeſſion the ſame ſhall be found, and bring them before me, or ſome other Juſtice of the Peace for this County, to be proceeded againſt according to Law.* Given, &c.

A Warrant to levy the 30 l. for not giving an Account how he came by ſuch Veniſon, or Skins.

Eſſex, ſſ. WHereas A. B. *of* E. *hath this preſent Day been duly convicted before me, by not giving a good Account to me, how he came by certain Pieces of Veniſon, which upon Search were found in his Houſe, in the Pariſh of* E. &c. *and not being able to produce the Party of whom he bought the ſame, or ſome credible Witneſs, to make Oath of the Sale thereof to him; ſo that he hath forfeited the Sum of* 30 l. *according to the Form of the Statute in that Caſe made and provided: Theſe are therefore to require you forthwith to levy the ſaid* 30 l. *ſo forfeited as aforeſaid, by Diſtreſs and Sale of the Goods and Chattels, of the ſaid* A. B. *and that you pay one third Part thereof*; ut prius.

Note; before any *Certiorari* ſhall be allowed, the Offender muſt give Bond to the Proſecutor to pay full Coſts, within a Month after Conviction confirmed, or a *procedendo* allowed; theſe Coſts are to be aſcertained on Oath.

The

The Condition of the Bond.

THE Condition of this Obligation is such, That *Whereas the above bounden* A. B. *was lately convicted before* F. C. *Esq; one of His Majesty's Justices of the Peace for the County aforesaid, at the Prosecution of* S. T. *above-named, for that he the said* A. B. *had several Pieces of Venison and Deer Skins found in his House in* E. &c. *And not being able to give a good Account how he came by the same, in such Manner as is required by a Statute in that Case made and provided: And whereas the said* A. B. *hath obtained a Writ of* Certiorari *to remove the said Conviction, and the Proceedings thereon into his Majesty's Court of* King's Bench *at* Westminster. *If therefore the said* A. B. *shall pay, or cause to be paid unto the said* S. T. *his full Costs to be ascertained upon the Oath of the said* S. T. *which he shall sustain in any Wise concerning the Prosecution of the said Conviction, within one Month after the same shall be confirmed, or a Writ of* Procedendo *shall be allowed thereon by the Court, that then this Obligation shall be void.*

Noverint universi, &c. Nos, &c. there must be two Sureties, such as the Justice shall approve. The Condition of the said Bond.

A Commitment for pulling down Pales or Walls of a Park.

WHereas P. Q. *of*, &c. *has made Oath before me, That* F. G. *of your Parish did on*, &c. *last in the Night time pull down and destroy several Pales, or a large Quantity of Wall belonging to the Park of* S. G. *of*, &c. *in the County aforesaid, Esq; contrary to an Act of Parliament in that Case made: These are therefore in his Majesty's Name, to Command you to apprehend the said* F. G. *and to convey him to the Gaol of*, &c. *aforesaid, and deliver him to the Keeper thereof with this Warrant: Hereby requiring you the said Keeper, to take the said* F. G. *into your Custody, and him safely to keep for the Space of three Months without Bail, according to the Directions of the Statutes made for punishing such Offences.* Given, &c.

3 & 4 W. & M. cap 10. 3 Months Imprisonment without Bail.

Deer in Park shall go to the Heir, not to the Executor.

Owen 20. 2 Leonard 222.

Waste cannot be assigned for killing Deer, except he kills them all.

A Person lending his Dogs to kill Deer in a Park, and Horses to hunt and carry it away, is aiding and assisting therein, within the Statute of 3 & 4 *W. & M. c.* 10. though he be not actually present. *Hill.* 1 *Ann.*

A

A Juſtice of Peace entred into a *Glover's* Houſe, and finding a Deer-Skin, ask'd him how he came by it, who told him that he bought it of *R. G.* and he not giving a good Account how he came by it, the Juſtice convicted him, and held good.

Conviction of Deer-Stealing was affirm'd in *B. R.* whereupon a *Levari Facias* was awarded to the Sheriff, who levied and ſold the Goods; adjudged that the Sale was good, becauſe the Record can't be ſent back again to the Juſtices; and as *B. R.* have Power to confirm the Conviction, by Conſequence they have Power to award Execution, which muſt be to the Sheriff who is their Officer, and not to the Conſtable; and it muſt be by *Levari Facias*, becauſe the Words of the Statute are, that the Offender ſhall forfeit, *&c.* to be levied by Diſtreſs; and where the Law gives a Diſtreſs for a publick Benefit, the Officer may ſell. 1 *Salk.* 379.

Deodand. Vid. Caſual Death.

Diſſenters.

WHether it be for the publick Good to ſuffer more than one Religion in a Country, has been *vexata queſtio.* I ſhall not pretend to determine it; but all Religions, and all Governments in the World, agree not to have two Religions in the Adminiſtration of the Government.

In this View the Clergy of the Church of *England*, have generally ſtood firm to the Intereſt of the Crown, and thoſe who oppoſed that Intereſt in civil Affairs, have always cheriſhed the other Party, amuſing the Word with the Notion of a tender Conſcience, while ſome leading and deſigning Perſons have by ſly Inſinuations and Artifices laboured to make both Parties Tools by Turns, in order to make way for their own private Advancement.

Diſſenters exempted from Penalties by 1 W. & M.

So that about the Time of the Revolution, the cunning Men on both ſides beginning to underſtand one another, a Law was made, *Anno* 1 *W. & M. c.* 18. that neither the Statutes of 1 *Eliz. c.* 2. 23 *Eliz. c.* 1. nor 3 *Ja.* 1. *c.* 4. ſhould extend to Perſons diſſenting from the Church, who muſt ſubſcribe the Declaration mentioned in the Stat. of 30 *Car.* 2. *c.* 1. and take the Oaths.

N. B.

N. B. this Act of 1 *W. & M. c.* 18. does not extend to Atheiſts, Deiſts, Jews, *&c.* or to any Perſon denying the *Trinity*.

Theſe Oaths and Subſcriptions muſt be adminiſtred and taken in the Quarter-Seſſions; and thoſe who take the Oaths muſt pay 6 *d.* for regiſtring, and 6 *d.* for a Certificate. After which they ſhall not be liable to the Penalties of 35 *Eliz. c.* 1. & 23 *Car.* 2. *c.* 1. nor be proſecuted in any Eccleſiaſtical Court for Non-conformity. But then they muſt not hold their Meetings in Places with Doors locked, barred, or bolted, nor until their Place of Worſhip is certifyed to the Biſhop of the Dioceſe, or to the Arch-deacon, or to the Juſtices at Quarter-Seſſions, and regiſtred there, and they have a Certificate thereof.

Oaths, &c. to be taken in Quarter-Seſſions.

Meetings not to be kept with bolted Doors.

When their Preachers have taken the Oaths and ſubſcribed the Declaration at the Quarter-Seſſions where they live, they ſhall not be liable to the Penalties in the Stat. of 17 *Car.* 2. *c.* 2. nor to the Penalties in 22 *Car.* 2. *c.* 1. nor to thoſe mentioned in 13 & 14 *Car.* 2. *c.* 1.

But then theſe Preachers muſt declare their Approbation, and ſubſcribe the Articles of Religion, except Part of the 20th Article, and except the 34, 35 & 36 Articles. Preachers thus qualified, ſhall not ſerve on Juries, and ſhall be exempt from Pariſh Offices.

And all other Diſſenters, if choſe to Pariſh Offices, may execute it by a Deputy.

If any Perſon diſturb them in preaching, he ſhall find Sureties to be bound with himſelf in a Recognizance of 50 *l.* to appear at the Seſſions, and being convicted there, ſhall forfeit 20 *l.* to the King.

Perſons diſturbing Preachers.

If he will not find Sureties, he ſhall be committed to Priſon till next Seſſions.

The Proof muſt be by two Witneſſes on Oath before one Juſtice.

If Anabaptiſt Preachers ſubſcribe the Articles of Religion, except that Part of the 27th Article which relates to Infant Baptiſm, and ſhall take the Oaths, and make, and ſubſcribe the Declaration, then they ſhall enjoy the ſame Advantages with other Diſſenting Preachers.

Anabaptiſts muſt ſubſcribe the Articles of Religion, except, &c.

Any Juſtice of Peace may require a Diſſenter to make and ſubſcribe the ſaid Declaration, and to take the aforeſaid Oaths; but becauſe there are ſome Perſons who ſcruple to take any Oath, therefore Proviſion is made to exempt them from the Penalties aforeſaid; if they make and ſubſcribe the ſaid Declaration, and

and likewiſe the Declaration of Fidelity and Profeſſion of Belief following.

The Declaration of Fidelity.

I A. B. *do ſincerely promiſe, and ſolemnly declare before God, and the World, that I will be true and faithful to King* George. ‘ *And I do ſolemnly profeſs and declare,* ‘ *That I do from my Heart, Abhor, Deteſt, and Renounce* ‘ *as Impious and Heretical, that damnable Doctrine and Po-* ‘ *ſition, That Princes excommunicated or deprived by the* ‘ *Pope, or any Authority of the See of* Rome, *may be de-* ‘ *poſed or murdered by their Subjects, or any other whatſoever;* ‘ *And I do declare, That no Foreign Prince, Perſon, Prelate,* ‘ *State, or Potentate hath, or ought to have any Power,* ‘ *Juriſdiction, Superiority, Pre-eminence, or Authority, Eccle-* ‘ *ſiaſtical or Spiritual within this Realm.*

They muſt likewiſe ſubſcribe a Profeſſion of their Chriſtian Belief in theſe Words.

The Profeſſion of Belief.

‘ I A. B. *profeſs Faith in God the Father, and in Jeſus* ‘ *Chriſt the Eternal Son, the true God, and the Holy Spi-* ‘ *rit, One God bleſſed for ever more, and do acknowledge the* ‘ *Holy Scriptures of the Old and New Teſtament, to be given* ‘ *by Divine Inſpiration.*

Declarations, &c. muſt be recorded at Quarter-Seſſions.

Theſe Declarations and Subſcriptions muſt be recorded at the Quarter-Seſſions.

If they ſcruple the taking any Oath, or making the ſaid Declarations, upon Refuſal, the Juſtice may commit them to Priſon without Bail, and certify their Names in the next Seſſions where he reſides.

Perſons ſcrupling to take an Oath, &c.

If the Perſon committed, ſhall upon a ſecond Tender at the Seſſions refuſe, &c. it ſhall be recorded, and he ſhall then be taken for a Popiſh Recuſant convict.

Muſt produce Proteſtant Witneſſes, or a Certificate under the Hands of four, &c. And likewiſe a Certificate under the Hands of ſix, &c.

And if any Perſon refuſe the Oath when tendered, he ſhall not be admitted to make and ſubſcribe the Declarations, tho' required by a Juſtice of Peace at the Seſſions; if he cannot within 31 Days after ſuch Tender produce, two Proteſtant Witneſſes to teſtify on Oath, that they believe him to be a Proteſtant Diſſenter, or produce a Certificate under the Hands of four Proteſtants conformable to the Church, or who have taken

taken the Oaths, &c. and he muſt likewiſe have a Certificate under the Hands and Seals of ſix, or more of the Congregation to which he belongs, owning him to be one of them.

And until ſuch Witneſſes and Certificate are produced, the Juſtice may take a Recognizance with two Sureties of 50 *l.* for producing the ſame, or otherwiſe he ſhall be committed till that Time.

The ſame Act ordains that all Laws formerly made for frequenting Divine Service on the Lord's Day, are in Force againſt all Perſons, except they come to ſome religious Aſſembly allowed by Law. They may be puniſhed likewiſe by the Cenſures of the Church, having no reaſonable excuſe for abſenting. 3 *Levin.* 61.

And if they did forbear for a Year after a Certificate thereof made by the Ordinary into *B. R.* then one Juſtice of Peace of the County where they dwelt, might bind them with two Sureties in 200 *l.* at the leaſt to be of the good Behaviour, which Recognizance is not to be diſcharged till they come to Church. 23 *Eliz. c.* 1.

The Forfeiture was to be divided between the King, Poor, and Proſecutor; and if not able, or not paid within three Months after Conviction, muſt be committed till they conform, or pay it.

The Proſecution upon theſe Acts is to be within a Year and a Day after the Offence, and before the Juſtices in Seſſions.

But Conformity before Judgment, either before the Biſhop of the Dioceſe, or in Seſſions, diſcharges the Penalties.

Several Perſons were indicted upon this Stat. of 23 *Eliz. c.* 1. 4 *Leon.* 54. and were outlawed upon it, and moved the Court to be diſcharged upon Submiſſion and Conformity; but it was denied until the Outlawry ſhould be reverſed, or they pardoned.

For a Precedent for an Action of Debt brought on this Stat. See 1 *Lutw.* 201.

By 29 *Eliz. c.* 6. it was enacted, That the Conviction ſhould be at *B. R.* or at the Aſſizes, and that all Grants with Powers of Revocation ſhould be void againſt the Queen, ſo as not to deprive her to levy the ſaid Forfeiture of 20 *l. per* Month. *N. B.* That by the 23 *Eliz. c.* 1. the Informer is to have a third Part of the Forfeiture; but if the Defendant is convicted by Indictment upon 29 *Eliz. c.* 6. before an Information brought, then the Queen is to have the Penalty, and therefore ſuch

Noy 117.
Lane 60.
1 Lut. 208.

2 Cro. 142. 3 Lev. 61.

ſuch a Conviction is a good Plea in Bar to any Information afterwards brought.

One Juſtice may ſend for one not coming to Church.

By Stat. 3 *Jac.* 1. *c.* 4. One Juſtice of the Diviſion where a Perſon liveth not coming to Church, may upon Proof of this Default, by one Witneſs on Oath, ſend for the Defaulter; and if he cannot give a Satisfactory Excuſe, the Juſtice may ſend a Warrant to the Church-wardens of the Pariſh, to levy the 12 *d.* for every Offence; and if no Diſtreſs can be taken, may then commit him till Paid.

If a Maſter retains a Servant abſenting, &c. for a Month, the Maſter forfeits 10 *l. per* Month.

Any diſſenting Preacher duly qualified, may officiate in any Congregation duly certified and recorded, though the ſame be not in the County, wherein he was qualified, but ſhall if required by a Juſtice, &c. produce a Certificate of his having qualified himſelf, and alſo ſubſcribe the Declaration before ſuch Juſtice, if thereto required.

5 Geo. repeals Part of 10 Ann. and Part of 12 Ann.

By 5 *Geo. c.* 4. Part of the Act paſſed 10 *Ann. c.* 2. for preſerving the Proteſtant Religion, by ſecuring the Church of *England*, as by Law eſtabliſhed, &c. ſtands repealed. As alſo does an Act made 12 *Ann. c.* 7. to prevent the Growth of Schiſm with this *Proviſo*, That no Mayor, Bailiff, or other Magiſtrate in that Part of *Great Britain* called *England*, *Wales*, *Berwick*, *Jerſey*, or *Guernſey*, ſhall knowingly, or willfully reſort to, or be preſent at any publick Meeting, or religious Worſhip, other than of the Church of *England*, as by Law eſtabliſhed, in Gown, or other peculiar Habit, or attended with Enſigns belonging to his Office, That every ſuch Mayor, &c. being convicted by due Courſe of Law, ſhall be diſabled to hold ſuch Office, &c. and incapable of any publick Office whatſoever.

The Form of a Certificate by four Proteſtants conformable within 31 Days after the Tender, &c.

WE *whoſe Names are hereunto ſubſcribed, being all conformable to the Church of* England, *do hereby certify whom it doth concern, That we do verily believe, that* N. S. *of*, &c. *is a Proteſtant Diſſenter.* Given, &c.

The

The Form of a Certificate by four Proteſtants not conformable, &c.

WE whoſe Names are hereunto ſubſcribed, having all taken the Oaths, and ſubſcribed the Declaration enjoined by a Statute made in the firſt Year of the Reign of the late King William *and Queen* Mary *Entituled,* An Act for exempting their Majeſties Proteſtant Subjects diſſenting from the Church of *England,* from the Penalties of certain Laws, *Do hereby certify, That we do verily believe* N. S. *is a Proteſtant Diſſenter.* Given, &c.

The Form of the Certificate from ſix of the Congregation.

WE whoſe Names are hereunto ſubſcribed, being Members of the Congregation of, &c. *Do hereby Certify whom it may concern, That we do own* N. S. *of,* &c. *to be one of our ſaid Congregation.* Given, &c.

An Indictment for not uſing the Sign of the Croſs in Baptiſm.

Eſſex, ſſ. JURʼ, &c. quod T. P. nuper de H. in Comʼ prædꝰ Clericus & Rector Eccleſie Parochialʼ de S. B. in H. Comʼ predictʼ per ſpatium ſex menſium ultʼ elapsʼ debuit dicere communes Precationes ſecundum modum & ordinem Libri (vocatʼ The Book of Common Prayer, &c.) ac debuit etiam infra tempus prædictʼ adminiſtrare Sacramʼ in Eccleſia prædictʼ prout mentionatʼ vel editʼ ſunt in Libro predicto prædꝰ tamen T. P. apud H. prædꝰ in Comʼ prædꝰ per Sex Menſes prædꝰ recuſabat uti & dicere nec uſus eſt Communʼ Precationʼ in Eccleſia Parochialʼ prædꝰ prout mentionatʼ in illo Libro & quod præfatʼ T. P. apud H. prædꝰ in Comʼ prædꝰ quarto die Auguſti Anno Regni, &c. miniſtravit Sacramentʼ Baptiſmi in Eccleſia Parochʼ prædꝰ cuidam Infanti Maſculo cujuſdam C. R. in alia Forma quam in dicto Libro illo Communis Precationis continetur & non faciebat ſignum Crucis ſuper Frontem ejuſdem Infantis in Miniſtrando Baptiſmʼ illi ſed ſignum illud facere adtunc & ibidem contemptuoſe recuſavit & denegavit in contemptum dictʼ Domʼ Regʼ Legʼ & Satʼ

hujus Regni Angl' nec non contra pacem dict' Dom' Reg' Coron' & dignitat' ſuas, &c.

The Statute of 3 *Jac.* 1. *c.* 4. gives Power to Juſtices in Seſſions to enquire, hear and determine of all Recuſants and Offenders, *&c.* for not coming to Church: And that at the Seſſions, in which an Indictment ſhall be found againſt ſuch an Offender, to make Proclamation, commanding him to render himſelf to the Sheriff of the County before the next Seſſions. And if he ſhall not then appear, it ſhall be a Conviction in Law upon the ſaid Indictment for the Offence therein mention'd, as if a Trial had been by Verdict.

That upon ſuch Conviction, he ſhall either in *Eaſter* or *Michaelmas* Term, which ſhall next happen, pay into the Exchequer after the Rate of 20 *l. per* Month, which ſhall be contained in the Indictment, and for every Month afterwards without any farther Indictment or Conviction, 20 *l. per* Month, by half yearly Payments in the Exchequer aforeſaid, except the King will take two Parts in three of the Lands of the Offender till he conform.

This is no Judgment, becauſe no Trial, and therefore tho' the Conviction ſhould be erroneous, yet no Writ of Error would lie, ſo that the Remedy is to quaſh it in the Exchequer. *Raym.*

For not Wearing the Surplice.

Middleſex, ſſ. JURS', &c. quod M. M. nuper de N. in Com' prædict' Clericus die Dominico, viz. Sexto die Septembris, Anno Regni, &c. apud N. præd' in Com' præd' (viz.) in Eccleſie Parochial', ibid. publice celebravit Preces Matutinas diverſis Parochianis, & Inhabitantibus ejusdem Parochie adtunc & ibidem in Eccl' præd' exiſtentibus, & tempore celebrationis precum illarum non induebat & uſus fuit aliquo ſuperpellicio (Angl' vocat' a Surplice) aut alio Ornamento aſſignat' Miniſtris utend' intra hoc Reg' angl' & quod M. M. præd' Sexto die Septembris, Anno ſupradicto tempore celebrationis precum præd' apud N. præd' in Eccleſia Parochial' præd' penitus recuſavit induere ſive uti aliquo ſuperpellicio contra formam ſtatuti in hujusmodi caſu edit' & provis' & contra pacem, &c.

For diſturbing a Miniſter's Preaching.

Eſſex, ſſ. JURꝰ', &c. quod D. E. nuper de S. in Com' prædꝰ Yeoman, ſexto die Septembris, Anno Regni, &c. apud S. in Com' prædꝰ voluntarie publ' & contemptuoſe moleſtavit & perturbavit quendam R. F. rectorem Eccleſie prædicantem ibidem R. F. adtunc & ibidem ad illud faciendꝰ ratione cure ſue ibidem legitime onerat' & alia enormia eidem R. F. adtunc & ibidem intulit in malum exemplum aliorum in hujuſmodi caſu delinquen' & contra formam ſtatuti in hujuſmodi caſu edit' & prædis' nec non contra pacem, &c.

Diſtillers. See Brewer.
Dogs. See Game and Hunting.

Drunkenneſs.

DRunkenneſs is an Offence for which a Man may be puniſhed in the Eccleſiaſtical Court, as well as by a Juſtice of Peace.

By Statute 4 *Ja.* 1. *c.* 5. & 21 *Ja.* 1. *c.* 7. If any Perſon ſhall be convicted of being Drunk by the View of the Juſtice, Oath of one Witneſs, or Confeſſion, he ſhall forfeit 5 *s.* for the firſt Offence, to be levied by Diſtreſs within a Week after Conviction, and for want of Diſtreſs, to ſit in the Stocks ſix Hours.

And for the ſecond Offence to be bound with two Sureties in 10 *l.* to be of the good Behaviour, or be committed.

The Proſecution to be within ſix Months after the Offence.

If an Ale-houſe Keeper ſhall be convicted as above of Drunkenneſs, he ſhall be diſabled to keep an Alehouſe for three Years.

The inferior Officer neglecting to levy the Penalty forfeits 10 *s.* to be levied and diſpoſed as the Penalty it ſelf.

The Proſecution on 4 *Ja.* 1. *c.* 5. was to be, and is ſtill before Juſtices of the Peace in their Seſſions by way of Indictment, where the Offender muſt be convicted, but by 21 *Ja.* 1. *c.* 7. one Juſtice hath Power to convict this Offender as above-mentioned.

Being a Drunkard, Cauſe to remove a Magiſtrate. *Jenkins* 173. *Godbolt* 514. *Rol.* 409.

A Conviction of Drunkenneſs on Information given.

21 Ja. 1. c. 7.

MEmorandum, *that* A. B. *of*, &c. *this Day*, &c. *came before me* C. D. *Eſq; one of his Majeſty's Juſtices*, &c. *and exhibited an Information on Oath againſt* E. F. *Eſq; That he the ſaid* E. F. *on*, &c. *laſt at* &c. *was very much drunk, and diſordered with Liquors in Defiance of the Statutes in that Caſe made, for promoting of Order and Goverment. And the ſaid* E. F. *appearing before me, by Virtue of my Summons, and not being able to clear himſelf from the ſaid Charge; I do therefore in Purſuance of the Statute pronounce the ſaid* E. F. *convicted of Drunkenneſs, and that he hath forfeited the Penalties incurred for Offences of that Nature.* Given, &c.

A Warrant to levy the Forfeiture for the firſt Offence.

4 Ja. 1. c. 5.

Eſſex, ſſ. WHereas A. C. *of*, &c. *Labourer, was by the Oath of* T. T. *of*, &c. *this Day convicted before me for being Drunk on*, &c. *laſt paſt at the Houſe of*, &c. *whereby he hath forfeited the Sum of* 5 s. *Theſe are therefore in His Majeſty's Name, to require you to demand of the ſaid* A. C. *the ſaid Sum of* 5 s. *ſo forfeited as aforeſaid, for the Uſe of the Poor of the ſaid Pariſh of*, &c. *And if the ſame ſhall not be paid into the Hands of the Church-wardens of the ſaid Pariſh, for the Uſe aforeſaid, within the Space of one Week from the Date hereof, That then you do levy it by Diſtreſs, and Sale of the Goods and Chattels of the ſaid* A. C. *and if the ſaid* A. C. *ſhall not be able to pay the ſaid Sum of* 5 s. *nor hath any Goods whereof a Diſtreſs may be taken to ſatisfy the ſame, That then you do ſet him in the Stocks, there to remain for the Space of ſix Hours according to the Direction of the Acts of Parliament in that Caſe made.* Given, &c.

A Warrant on Conviction of a ſecond Offence to bring Sureties for good Behaviour.

21 Ja. 1. c. 7.

Eſſex, ſſ. WHereas A. C. &c. *was upon*, &c. *laſt, lawfully convicted before me for being Drunk in*, &c. *contrary to the Statute in that Caſe made: And whereas the ſaid* A. C. *hath in like manner this preſent Day*

Day been a second time convicted before me, of being Drunk at, &c. on, &c. last: These are therefore to require you the said Constable to bring the said A. C. *before me, or some other of His Majesty's Justices of the Peace for this County, to enter into a Recognizance with two Sureties for his good Behaviour, according to the Form of the Statute in that Case made and provided: And if the said* A. C. *shall refuse to bring such Sureties, That then you convey him to the Gaol of, &c. aforesaid, and deliver him to the Keeper thereof, hereby commanding you the said Keeper to receive the said* A. C. *into your Custody, and him safely to keep until he shall enter into such Recognizance as aforesaid.* Given, *&c.*

The Condition of the Recognizance.

THE *Condition of this Recognizance is such, That if the above bound* A. C. *shall personally appear before His Majesty's Justices of the Peace at the next General Quarter-Sessions of the Peace, to be holden at, &c. for the County of, &c. aforesaid, and shall not depart the Court without Leave thereof, and in the mean time shall be of good Behaviour, That then, &c. or else, &c.*

An Indictment against a Drunkard.

Jurat', &c. quod A. C. nuper de, &c. die & Anno, &c. & multis diebus & vicibus tam antea quam postea apud &c. in Com' præd' & alibi in diversis aliis locis infra Com' præd' fuit & adhuc est Communis Poculator (Angl' a Drunkard) & Communis Perturbator pacis dict' Dom' Regis in malum exemplum aliorum subditorum dict' Dom' Reg' & contra pacem, &c.

Note; These Statutes do not take away any Jurisdiction which is lodged in the Ecclesiastical Courts, *pro Reformatione Morum.*

Duelling.

D. and *C.* were indicted for a Misdemeanor which was, that *D.* had challenged one by way of Duelling, and sent it by *C.* to the Party challenged, C. knowing the Matter. For this they were fined each 100 *l.* committed for a Month without Bail, to make Recantation within that Time, as the Court

ſhould direct, and to be of the good Behaviour for ſeven Years. *Paſch* 16 *Car.* 2. *B. R.* 1 *Sider.* 186. *pl.* 10. *Rex* ver. *Darcy & Collins.* 1 *Keb.* 694. *pl.* 11.

Dyers.

BY Stat. 13 *G.* 1. It is enacted, That if any Perſon ſhall in *England* dye black any Bays, or other Woollen Goods for Mather Blacks, not being dyed throughout with Woad, Indico, and Mather only, or ſhall dye black any Cloths, Long Eells, Bays, or other Woollen Goods for woaded Blacks, not being woaded throughout, he ſhall forfeit, *viz.*

Penalties not dying with Woad, Indico, and Mather only, &c.

For every long Bocking Bays, 44 *s.* For every *Colcheſter* or Short Bays, 22 *s.* For every Cloth deceitfully dyed black, without being woaded throughout, 40 *s.* For every Piece of Bays ſo deceitfully dyed, 30 *s.* For every *Colcheſter* or Short Bays, 12 *s.* For every Perpetuana or Stuff, 4 *s.*

All Woollen Goods truly mathered Black, ſhall be marked with a red and blue Roſe, and all Woollen Goods truly woaded Black throughout ſhall be marked with a blue Roſe only; and if any ſhall counterfeit any of the ſaid Marks, or ſhall affix any ſuch Marks to any Woollen Goods deceitfully dyed, he ſhall forfeit 4 *l.* for every Piece of Goods, to which ſuch Marks ſhall be affixed.

Penalty of uſing Logwood in dying Blue.

If any Perſon uſe any Logwood in dying of blue, he ſhall forfeit 40 *s.* for every Piece of Cloth ſo dyed; for every long Piece of Bocking Bays, 22 *s.* For every *Colcheſter* or Short Bays, 12 *s.* And for every Perpetuana or Stuff, 4 *s.*

Dyers may appoint Searchers, &c.

All Dyers of Woollen Cloth or Stuffs within the City of *London*, or within the weekly Bills of Mortality, or within Ten Miles Compaſs of the City, ſhall be ſubject to the Examination, and Inſpection of the Dyers of *London*; and the ſaid Company may appoint skilful Men to be Searchers within their Limits, and out of their Limits: The Juſtices at the Quarter-Seſſions for any County or Place, ſhall appoint Searchers; the Searchers taking to their Aſſiſtance, a Conſtable or Peace Officer at all ſeaſonable Times of the Day, may enter into the Shop or Workhouſe of any Perſons uſing the Trade of Dying, or of any Perſon concern'd in the dying Woollen Goods, or in fixing ſuch Marks, to

ſearch and examine all Cloths, Bays, &c. and if any oppoſe them, he forfeits 10 *l.*

All Offences againſt this Act, where Forfeitures exceed 5 *l.* ſhall be recovered by Action of Debt, &c. and where the Forfeitures ſhall not exceed 5 *l.* the Offence ſhall be examined by two or more Juſtices where the Offence ſhall be committed, (ſuch Juſtices not being concerned in the matter of Complaint) and all Forfeitures within ten Miles of *London* ſhall go, one Moiety to the Informer, and the other to the Company of Dyers; and beyond ſuch Compaſs, the Whole ſhall go to the Informer. How Penalties are to be recovered.

And if any Offender ſhall not pay the Penalty where the ſame ſhall not exceed 5 *l.* by 20 Days after Conviction, the Juſtices may iſſue their Warrants to the Conſtable to levy it by Diſtreſs, and where no Diſtreſs can be found, they may commit the Offender to the Houſe of Correction, not exceeding three Months. How to be levied.

All Proſecutions ſhall be commenced within 40 Days next after the Offence committed or diſcovered; and if any Perſon find himſelf aggrieved by the Juſtices Judgment, he may appeal to the next Quarter-Seſſions, giving ſufficient Notice of the Appeal, whoſe Determination there ſhall be final, and they may allow reaſonable Coſts to either Party. Proſecutions muſt be commenced in 40 Days.

If any Suit be commenced againſt any Perſon for any thing he ſhall do in Execution of the Powers by this Act granted, the Defendant may plead the General Iſſue, and on Verdict, &c. recover treble Coſts. Defendant may plead the general Iſſue.

This Act ſhall be allowed as a publick Act, in all Courts and Places of this Kingdom.

Eggs of Fowl deſtroyed.

THEY who take any Eggs of Faulcon, Goſshawk, Lanner or Swan out of their Neſt, ſhall ſuffer a Year and a Day's Impriſonment, or pay a Fine, one Moiety to the King, the other to the Owner of the Ground, or if Swans Eggs, to the Owner of the Swans. 11 *H.* 7. *c.* 17.

If any take from the Neſt, or deſtroy the Eggs of any wild Fowl uſually eaten, between the firſt of *March*, and the laſt of *June*, they ſhall be impriſoned for a Year, or forfeit for every Crane and Buſtard's Egg, 1 *s.* 8 *d.* for every Bittern Heron, or Shovelack's 11 H. 7. c. 17.

Egg, 8 *d.* for every Egg of a Duck, Teal, or other wild Fowl, 1 *d.* 25 *H.* 8. *c.* 11.

25 H. 8. c. 11.

Those who shall take, or willingly destroy Eggs of Pheasant, Partridge, or Swan, and thereof shall be convicted by Confession or Oath of two Witnesses before two Justices, shall be imprisoned three Months, unless he pay to the Church-wardens of the Parish where the Offence was committed, or Party taken, the Sum of 20 *s.* for the Use of the Poor. 1 *Ja.* 2. *c.* 27.

Engrossers. See **Forestallers.**

Egyptians.

To continue in Company of Egyptians above a Month, is Felony.

IF any Person above Fourteen Years of Age shall call himself an *Egyptian*, or shall be in Company with those who disguise themselves in Habit, or otherwise like *Egyptians*, and continue in *England*, one Month, 'tis Felony without Benefit of Clergy. 1 & 2 *Phil. & Mar. c.* 4. and by 5 *Eliz. c.* 20. Clergy is taken away.

He who transports them, forfeits 40 *l.* between King and Prosecutor.

Episcopal Congregations.

Persons disturbing Episcopal Congregations in Scotland.

PErsons disturbing Episcopal Congregations in *Scotland*, or Misusing, &c. any Minister or Pastor thereof, shall be bound by one Justice in a Recognizance of 50 *l.* for Appearance at next Sessions, on Refusal to be committed to Gaol. Proof must be by two Witnesses, on Conviction at Quarter-Sessions, shall forfeit 100 *l.* to be divided between the Poor of, &c. and Informer, Note; before officiating, must take the Oaths, &c. and present at Quarter-Sessions Letters of Orders from the Hands of some Protestant Bishop, which must be entred on Record by the Register or Clerk, whose Fee is 1 *s.* And if any Magistrate having, or pretending to have any Authority in *Scotland*, shall forbid or hinder their Meeting, or Assembling within their Jurisdiction, or cause the Doors of their House to be shut up, such Magistrate, &c. shall on Conviction as before, forfeit 100 *l.* to be disposed of as before. *Note* the Act against irregular Baptisms and Marriages, and by Episcopal Ministers, repealed. 10 *Ann. c.* 7.

Escape.

Eſcape.

ESCape from the *French* word *Eſchapper*, and ſignifies in the Law, a Flying from, or being at Liberty from ſome lawful Reſtraint, without being delivered by due Courſe of Law; and 'tis either negligent or voluntary; but in Offences below Treaſon or Felony, there is no Difference, whether the ſame be voluntary or not; for in both Caſes the Officer is only fineable.

Eſcape what, 'tis either negligent, or voluntary.

To ſuffer a Felon wilfully to Eſcape, is Felony, but a negligent Eſcape is only fineable. 1 *El.* 2. *Lamb.* 440. Negligent Eſcape after Attaint, Fine is 100 *l.* after an Indictment only, is 5 *l.* and ſo in all other Caſes at Diſcretion; but there muſt be a legal Commitment to warrant it. *Dalt.* 380.

By Stat. 3 *H.* 7. & 1 *R.* 3. *c.* 3. Juſtices of Peace have Power in Seſſions to enquire of Eſcapes of Felons.

If a Stranger takes a Felon, and delivereth him to another, who ſuffereth him to go at large, 'tis an Eſcape in both, for the firſt Man ought to have delivered him to the Conſtable, and to no other. But if a Man receive a Felon, and ſuffers him to go away before Apprehenſion, this is no Eſcape, tho' he knows him to be a Felon, becauſe he never was arreſted, but then he ſhall be deemed an Acceſſary. 9 *H.* 4. *Cro.* 39.

If a Gaoler permit a Priſoner to go at large, tho' he returns, yet 'tis an Eſcape, and fineable, for he ought to keep his Priſoner in Cuſtody; but if after a negligent Eſcape, and before the Gaoler can be puniſhed, he ſhall take the Priſoner upon freſh Suit, he ſhall be excuſed. 3 *Rep. Ridgway's* Caſe.

Gao'ers ſuffering Priſoner to go a large how puniſhed.

To Bail one not bailable by Law, *pro defectu ſcientiæ*, is a negligent Eſcape.

If the Gaoler prove inſufficient, the Sheriff muſt anſwer for Eſcapes in civil Actions; but where the Offence is criminal, 'tis otherwiſe.

Sheriff anſwerable in civil Cauſes where Gaoler is inſufficient.

To make the Eſcape Felony, firſt the Crime for which the Priſoner was committed, muſt be Felony at the Time of the Eſcape, or otherwiſe it is but fineable. And ſecondly, there muſt be a legal Commitment.

Where the Eſcape is Felony.

After a Pardon for Murder, but pending an Appeal the Goaler ſuffered the Priſoner to eſcape, 'tis Felony in the Gaoler. *Plow.* 476. B.

The Crime is equal in a Juſtice of Peace, for taking a Felon out of Gaol without Bail, or ſuffering him to go at large without Bail or Commitment, where

Where the Juſtice is anſwerable.

the Offender confesses the Felony before him. 'Tis Felony likewise in a Constable to suffer a Felon to destroy himself.

Dyer 99. pl. 68. And if one is put in the Stocks on Suspicion of Felony, and another lets him go, this hath been held to be Felony at common Law, altho' the Party was never indicted. *Dyer* 99.

A Man was wounded, and the Offender taken by a Constable who suffered him to escape, the wounded Man dies within a Year and a Day, 'tis only fineable, 3 *Leo.* 207. And where a Man is apprehended for Manslaughter, *per infortunium*, or *se defendendo*, and suffer'd to escape, 'tis not Felony in the Officer, but fineable only.

Where a Town is to be amerced. Where a Murder is committed in a Town not walled, the Town shall be amerced if the Murderer escape, if it be in the Day-time, tho' done in the Town-Field or a Lane; but in the Night, 'tis otherwise, as if a Man wound another in the Day-time, and he die in the Night following, the Town shall not be charged, for it was not Felony before the Man died. 1 *Leo.* 137. 1 *Cro.* 40.

All Escapes must be presented before the Offender shall be obliged to answer.

The Hundred must answer for a Man slain out of the Town, and for Insufficiency the County shall be charged. *Dalt.* 403.

If a Felon escape after Condemnation, and is retaken, upon Confession or Proof, that he is the same Person, he shall be executed. *Poph.* 131.

If a Man arrest another for Treason, and after letteth him go at Liberty, this is a wilful Escape, and shall be adjudged Treason. *Dalt.* 377.

If any Person arrested for Felony or Suspicion thereof, be put in the Stocks, or in the Possession of him who arrested him, if he make his Escape, this is Breaking Prison, and Felony in the Offender. *Dalt.* 378.

A Prisoner rescued at the Gallows. If a Prisoner be rescued at the Gallows, or going to Execution, this is Breaking of Prison within the Stat. *de frangentibus prisonam*, made 1 *Ed.* 2. & 1 *H.* 7. *c.* 6. and is Felony.

Sheriffs shall have the Keeping of the Gaol, and Making the Gaoler. *N. B.* The Sheriff of every County shall have the Keeping of, and shall be chargeable, and charged with the common Gaol and Prison of the same County, and with all the Prisoners therein, and must put in such Gaolers or Keepers, for whom they will answer, as appears by the Stat. 14 *Ed.* 3. & 19 *H.* 7. *c.* 10.

If

If the Sheriff arreſts one for Felony, and he returns a *Cepi corpus*, and hath not the Body at the Day, this is an Eſcape. 40 *Ed.* 3. *Lib. Aſſiz. pl.* 42.

If one be murdered in a Town in the Day-time, and the Murderer eſcape, tho' in the Night, this is an Eſcape in the Town. 3 *Ed.* 3. *Fitz. Abr.* N° 292, and N° 302.

Vide Stat. 1 & 5 *Ann.* for Eſcape-Warrants in Civil Actions.

In Indictments for voluntary Eſcapes for Felony, 'tis neceſſary to ſet forth where the Party was taken; becauſe upon Not guilty pleaded to it, the *Venue* muſt come from the Place where the Offender was taken, as well as from the Place where he eſcaped. *Cro. Eli.* 203. What neceſſary to ſet forth in Indictments for Eſcapes.

'Tis neceſſary likewiſe to ſhew for what Felony he was committed, becauſe the Officer may traverſe it, and when it was committed. *Cro. Eliz.* 752.

An Indictment againſt a Conſtable for the Eſcape of a Felon committed to him.

Eſſex, ſſ. JURR' &c. quod cum B. T. nuper de M. in Com' Y. Taylor, Decimo die Junii Anno Regni, &c. apud M. pred' in Com' pred' captus & arreſtat' fuit pro ſuſpicione felonie per ipſum fore perpetrat', viz. pro furatione quinq' libr̃arum in pecuniis numeratis de bonis & catallis cujuſdam C. P. de M. pred' in Com' pred' & pro eadem felonia pred' B. T. die Anno & Loco ſuprad'* commiſſus fuit D. A. de N. in Com' pred' Yeoman, adtunc Conſtabulario Ville de N. pred' exiſten' per preceptum R. B. Ar' un' Juſtic' dict' Dom' Reg' ad pacem, &c. cui quidem D. A. p pred' preceptum Mandat' fuit prefat' B. T. ſalvo cuſtodire & ipſum ad Gaolem ſive Priſonam Dom' Regis apud M. in Com' predict' convehere ſive adducere & adtunc & ibidem tradere cuſtod' Gaole ſive Priſone predict' ad ſalvo & ſecure cuſtodiend' donec inde legitimo modo deliberat' foret predict' tamen D. A. & quidam E. F. nuper de M. in Com' predict' Labourer, prefat' B. T. ſic in cuſtodia pred' D. A. exiſten' pro felonia predict' Viceſimo Die Junii Anno 13. ſuprad' apud M. pred' in Com' pred' evadere & ad largum ire voluntarie & felonice permiſerunt contra pacem dict' Dom' Regis Coron' & Dignitat' ſuas, &c.

* Debito modo Vent. 170.

If 'tis for a negligent Eſcape, then ſay pro Defectu bonæ & diligentis Cuſtodiæ evadere, &c. And inſtead of Voluntarie, ſay Negligenter, and leave out Felonice.

Eſtreats.

Eſtreats what.

THeſe are the Extracts of Fines, Forfeitures, and Amercements taken out of the Rolls of the Clerk of the Peace, of which he makes two Parts, and delivers one to the Sheriff, and the other to the Barons of the Exchequer.

The Sheriff levying the King's Debt without ſhewing the Party, the Eſtreats under the Seal of the Exchequer muſt be fined, and pay treble Damages to the Party. 42 *Ed.* 3. *c.* 39. 7 *H.* 4. *c.* 3. *Lamb.* 432.

Eſtreats not to be levied on wrong Perſons.

Iſſues eſtreated, ſhall not be levied upon any other Perſon than upon him, who by the Eſtreat ought of right to be charged upon Pain, that every Clerk writing ſuch Eſtreat, and cauſing it to be executed; and the Officer ſhall forfeit five Marks to the King, and as much to the Party grieved, to be recovered by Action of Debt, *&c.* 27 *Eliz. c.* 7.

The Clerk of the Peace ſhall within 24 Days after the 29th of *September*, yearly deliver to the Sheriff an Eſtreat of all Fines, *&c.* and ſhall alſo on or before every ſecond *Monday*, after the Morrow of all Souls, deliver into the Exchequer a perfect Schedule of ſuch Eſtreats, upon Pain of 50*l.* to the Queen, and to the Informer, 22 & 23 *Car.* 2. *c.* 22. made perpetual, *per* 4 & 5 *W.* & *M. c.* 24.

No Juſtice or Clerk of the Peace ſhall ſpare, *&c.* any Indictment, *&c.* upon Pain to forfeit the treble Value. 42 *Ed.* 3. *c.* 9. 7 *H.* 4. *c.* 3.

The Eſtreat muſt mention for what Offence the Fine was impoſed. *Lane* 55.

Eſtreats muſt mention Quality of the Offence for which the Fine was impoſed.

An Eſtreat of diverſe Fines upon ſeveral Indictments at the Quarter-Seſſions, for ſeveral Riots was ſent into the Exchequer, and the Eſtreat mentioned not for what Offences the Fines were impoſed, and the Records of the Indictments were removed into the Crown Office by *Certiorari*. Chief Baron *Tanfield* ſaid, the Eſtreat was inſufficient, and no Proceſs ought to be ſent out upon them; becauſe they do not mention the Quality of the Offence, for which the Fines were impoſed. *Trin.* 7 *Ja.* 1. *Lane's Rep.* 55.

Evidence.

THE Witneſſes in Caſe of Felony, &c. muſt be bound in a Recognizance to appear, and give Evidence at the next general Gaol-delivery, and if they refuſe, they may be committed or bound to the good Behaviour. 2 & 3 *Ph. & M. cap.* 10.

Witneſſes muſt be bound over to give Evidence.

One was committed by the Court of Quarter-Seſſions for refuſing to be ſworn, and give Evidence to the Grand Jury on an Indictment for Treaſon; 'tis a great Contempt of Court; but the ſafeſt way had been to fine him, and then to have committed him 'till he had paid the Fine.

In my Lord *Audley*'s Caſe, the Wife being the Party grieved, was admitted as Evidence againſt her Huſband; and then a Diſtinction was taken between the Caſe of a common Perſon between Party and Party, and the Caſe between the King and the Party, upon an Indictment; in the firſt of which 'twas ſaid, ſhe might not be a Witneſs, but in the laſt ſhe might. But my Lord *Hale* was of another Opinion, *viz.* That in Felonies, neither the Wife, nor her Examination ſhall be uſed for or againſt her Husband; and that Diſtinction in my Lord *Audley*'s Caſe hath ſince been often denied to be Law, and ſo the Law ſtands at this Day. *Raym.*

Wife can't be a Witneſs for, or againſt her Husband, nor a Husband for or againſt his Wife.

In *Mary Grigg*'s Caſe the Court would not admit the firſt Husband as a Witneſs to prove the firſt Marriage againſt a Woman marrying a ſecond Husband, and declared, that a Wife could not be admitted to give Evidence againſt her Husband, nor a Husband againſt his Wife, in any Caſe except Treaſon.

But yet a Wife *de facto*, as an Heireſs taken away, and by Threats prevailed on to marry the Man, ſhall be a good Witneſs againſt him; and if convicted upon her Evidence, he ſhall be hanged. 1 *Vent.* 143. And an Infant may be a Witneſs for, or againſt his Parents.

One convicted of Perjury, tho' pardoned, or of Forgery or Conſpiracy, is not to be a Witneſs, yet the Juſtice may bind ſuch Witneſſes to give Evidence, but then he is to inform the Judge of their Credit. Yet one convicted of Felony, and pardoned, is a Witneſs, for the Pardon takes away both *pœnam* and *reatum*. *Godb.* 288. *Raym.* 369. 1 *Vent.* 349. So likewiſe if burnt in the Hand. *Style* 388. But in Caſes of Perjury

Convicted of Perjury, &c. can't be a Witneſs.

jury or Forgery, regularly, the Party whoſe Intereſt is defeated or prejudiced by the Deed, is no Evidence to prove the Fact.

But a Perſon burnt in the Hand guilty of Felony, and pardoned, may be an Evidence in civil as well as criminal Caſes. *Black.* 111. *Kel.* 37. *Godb.* 228. *Raym.* 369. 1 *Vent.* 349. *Style* 388.

One convicted for publiſhing Libels, and another for ſinging a Ballad againſt the Government, were put in the Pillory, and afterwards were Witneſſes to a Will, and upon an Appeal to the Delegates, they were allowed to be good Witneſſes, becauſe the Infamy ariſes from the Nature of the Crime, and not from the Puniſhment; but in this Caſe, neither of the Offences are infamous, either by the Canon or Civil Law, (and by thoſe Laws they were then to judge) tho' 'tis otherwiſe by the Common Law. *Lev.* 3. *part* 426.

One confeſſing the Felony may be a Witneſs.

But our Law does not allow a Perſon duly ſet in the Pillory to be a Witneſs. *H. P. C.* 263.

Where a Felon confeſſeth the Fact, he may give Evidence againſt another, and the accuſed may make his Defence by Witneſſes upon Oath, and have the ſame Proceſs to compel them to appear as is uſually granted to the Accuſer for Witneſſes againſt him. *Dalt.* 408.

And if a Witneſs is not able to travel, the Juſtice may excuſe his perſonal Appearance, and certify his Examination at the next Aſſizes. *Ibid.*

Depoſitions before a Juſtice of Peace, no Evidence, though the Witneſs was dead.

In an Information for a Libel againſt the Government, the Attorney-General offered in Evidence ſome Depoſitions taken before a Juſtice of Peace concerning the Fact, the Witneſs being dead; but it was not allowed by the Court, becauſe ſuch Depoſitions may be uſed only in Evidence in Caſes of Felony, by the Stat. 1 & 2 *P. & M. c.* 13. and therefore ſhall not be extended any further.

In Caſes of Treaſon, the King's Counſel may manage the Evidence for the King, before the Grand Jury, in order to the finding the Bill, becauſe the King's Counſel are the only Proſecutors in his Caſes.

Feme covert, or Infant can't be bound over.

A *Feme Covert*, or Infant, being a Witneſs, cannot be bound in a Recognizance, to appear at Seſſions, and if the *Feme* be bound with her Husband, 'tis void as to her; but they may be bound by Sureties, and on Refuſal may be committed. 11 *Rep.* 52.

Every

Every Perſon produced as a Witneſs on the Behalf of a Priſoner upon Trial for Treaſon or Felony, muſt be upon Oath to ſpeak the Truth, the whole Truth, and nothing but the Truth; and if convicted of wilful Perjury, ſhall ſuffer ſuch Puniſhment as by the Law may be inflicted on ſuch an Offender. 1 *Ann. cap.* 9.

In Treaſon working Corruption of Blood, or in Miſpriſion of ſuch Treaſon, the Party accuſed is not permitted to have a Note of the Witneſſes Names againſt him; but they muſt be two lawful Perſons, and both to the ſame Overt Act, or two Acts of the ſame Treaſon; ſo that if two or more Treaſons are alledged in one Indictment, one Witneſs to one, and another to the other, they ſhall not be accounted two Witneſſes; and no Evidence ſhall be admitted to an Overt-Act which is not expreſsly laid in the Indictment. 7 & 8 *W.* 3. *c.* 3. In Treaſon muſt be two Witneſſes to each Act of Treaſon.

A Juror may be an Evidence on Requeſt of either Party, but then he muſt be examined upon Oath in open Court, and not by the reſt of the Jurors in private. *Style Rep.* 233. A Juror may be an Evidence.

No Quaker is to give Evidence in any criminal Cauſe, 7 & 8 *W.* 3. *c.* 34. but a Perſon burnt in the Hand will be admitted to give Evidence, as well in criminal as in civil Cauſes. *Kel.* 37. Quakers can't be Witneſſes in criminal Cauſes.

Evidence { Maintaining / or / Not Maintaining } the Indictment.

Indictment of a Felony, 30 *Novemb.* and the Evidence is of another Day; the Jury may find the true Day, and the Forfeiture ſhall relate to it. Forfeiture relates to the Day found by the Jury.

If the Felony is laid to be committed at ſuch a Place, and the Evidence proves the Fact at another Place in the ſame County, 'tis well enough.

On an Indictment for High Treaſon, Evidence may be given of the Fact at any Time before, or after the Time laid in the Indictment; but it muſt not be after the Indictment found; neither is the Evidence reſtrained to the Place, ſo it be in the ſame County; and ſo it is in all criminal Caſes. Evidence not reſtrained to the Place, ſo it be in the ſame County.

If one is indicted for poiſoning with one kind of Poiſon, and the Evidence is of another, or for killing with one Weapon, and the Evidence is of another, the Indictment is maintained; for it agrees in Subſtance.

ſtance. One concerned by Conſequence in Intereſt is not to be allowed a good Evidence againſt one as a Cheat.

Or that *I.* gave the Wound, and that *R.* and *S.* were abetting, and the Evidence that *B.* gave the Wound, and that *R.* and *S.* were preſent with another, and abetting, *&c.* 'tis ſufficient.

So alſo an Indictment for Murder *ex militia præcogitata*, the Evidence is of Malice implied, as killing an Officer in Execution of Juſtice, *&c.* maintains the Indictment.

If Evidence differ from Indictment not good.

But if the Indictment and Evidence differ in the manner of the Death; as if it be for poiſoning, and the Evidence is of ſtabbing; that will not maintain the Indictment.

But no Man is to be condemned without an Accuſer. *Dalt.* 409.

Proſecutor bound to prefer Bill, as well as to give Evidence.

It is proper that the Parties injured be bound by the Juſtice not only to appear, and give Evidence; but alſo to prefer a Bill of Indictment againſt the Priſoner; and the other Perſons, who can inform any material Thing to prove the Felony, may be bound to give Evidence only. *Dalt.* 409.

Per Cur. in Caſes of Felony, Depoſitions before a Juſtice of Peace, if the Deponent die, may be uſed in Evidence by the Stat. 1 *&* 2 *P. & M. c.* 13. but in no other Caſe. 1 *Salk.* 281. *The King* verſ. *Pain. Hill.* 7. *W.* 3. *B. R.*

Where there is Cauſe of Action againſt *J. S.* only, and the Action is brought againſt divers others againſt whom there is no Cauſe of Action; and that is by Covin only, to take away their Evidence, if this appears upon the Evidence, the Juſtices may and ought to receive their Teſtimony; and ſo it was done in the Exchequer againſt one *Dimoke*, and others. *Mich.* 24 *&* 25 *Eliz. Savil's Rep.* 34. *pl.* 81.

Where a Hundredor may be a Witneſs.

Where the Iſſue was, whether the Place where a Man was robbed be within the Hundred of *W.* it was reſolved, that if one has Lands, but doth not inhabit in the ſaid Hundred, but hath let them, he may be a Witneſs; but a Man who inhabits there, altho' he pays no Taxes, ſhall not be a Witneſs, becauſe he is compellable to Watch and Ward. *Mich.* 1657. 2 *Sid.* 2. *Oliver* verſ. *Hund. of Wallington* in *Surrey*.

Where a Woman taken away is a good Witneſs.

J. B. was indicted upon the Statute 3 *H.* 7. *c.* 2. for the forcible taking away, and marrying one *Lucy Ramſey* of the Age of Fourteen Years, and having 5000 *l.* Portion. The Court *ſeriatim* delivered their

Opinions, that ſhe was a good Witneſs; 1ſt, for that there was one continuing Force upon her from the Beginning 'till the Marriage, and therefore whatever was done during that Violence, was not to be reſpected. 2dly, As ſuch Caſes are generally contrived, if the Woman tho' married could not be a Witneſs, the Criminal would go unpuniſhed; and he was found Guilty, and hanged. *Trin.* 25 *Car.* 2. *B. R.* 1 *Vent.* 243. *John Brown's* Caſe.

In a Trial about repairing Highways, no Perſon can be a Witneſs who is chargeable to the repairing of the Way; but thoſe who are not chargeable, are good Evidence. *Hill.* 14 & 15 *Car.* 2. 1 *Keb.* 435. *pl.* 23. *Rex* verſ. *Inhabitants of Somerſham.*

A Perſon burnt in the Hand will be admitted to give Evidence as well in criminal as in civil Cauſes; adjudg'd by Juſtice *Hyde. Kel.* 37. for Clergy is a Statute Pardon. By Stat. 1 *Ann. c.* 18. In all Informations and Indictments concerning the Repair of Bridges, the Inhabitants of the Place where, &c. ſhall be received as Witneſſes.

A Warrant to Summon a Witneſs concerning a Felon.

Eſſex, ſſ. *WHereas I have been informed that* S. C. *of*, &c. *was lately robbed at*, &c. *and that* D. P. *of*, &c. *is a material Witneſs to prove by whom the ſaid Robbery was committed: Theſe are therefore to require you to cauſe the ſaid* D. P. *forthwith to come before me, or ſome other Juſtice of the Peace for this County to give ſuch Information and Evidence as he knoweth, concerning the ſaid Offence, that ſuch further Proceedings may be had therein, as to Juſtice doth appertain.* Given, &c.

Condition of a Recognizance for Evidences to appear againſt a Felon at the Aſſizes.

THE Condition of this Recognizance is ſuch, That if the above bound *D. P.* ſhall perſonally appear at the next Aſſizes or Gaol-Delivery, (or at the next general Quarter-Seſſions of the Peace to be held at, &c. for, &c.) and then and there give ſuch Evidence as he knows againſt *P. C.* of, &c. con- 2 & 3 P. & M.

concerning his felonious Stealing of one Silver Tankard, &c. out of the Houſe of *S. C.* &c. on, &c. laſt paſt, and do not depart thence without Leave of the Court, that then, &c. or elſe, &c.

Examination.

What a Juſtice muſt do when a Felon is brought before him.

WHEN any Perſon is brought before a Juſtice of Peace for Felony, or Suſpicion thereof, before ſuch Juſtice commit him to Priſon, he muſt firſt take the Examination of the Offender; and alſo, 2dly, the Information of ſuch as bring him; and ſo much as is material to prove the Felony, he ſhall put in Writing within two Days after ſuch Examination; 3dly, he muſt bind the Witneſſes by Recognizance to appear at the next Gaol-Delivery to give Evidence, &c. 4thly, he muſt make his *Mittimus* to ſend him to Gaol, unleſs he be bailable, and then two Juſtices, (*Quorum unus*) may bail him; 5thly, the ſaid Juſtice muſt certify at the next Gaol-Delivery, ſuch Examination, Information, Recognizance, and Bailment, or elſe the Juſtice may be fined by the Judges of Aſſize. 1 & 2 *P. & M. c.* 13. 2 & 3 *P. & M. c.* 10.

In ſmall Felonies Examination muſt be ſent to the Quarter-Seſſions.

But for Petty Larcenies, and ſmall Felonies, the Examinations and Informations may be certified to, and the Informers bound over to the Quarter-Seſſions where ſuch Offenders may be tried.

The Juſtice muſt examine the Witneſſes upon Oath, and they muſt examine the Felon likewiſe, but not on Oath, for no Man is obliged to accuſe himſelf. *H. P. C.* 191.

And theſe Informations may be given in Evidence at the Trial, though the Party is dead, but then either the Juſtice or his Clerk muſt be ſworn to the Examination. Lord *Morley*'s Caſe.

Offender's Confeſſion given in Evidence, if ſigned.

If a Felon confeſſeth the Fact upon Examination, the Juſtice muſt make him ſubſcribe his Name or Mark of his Examination and Confeſſion; and ſuch Confeſſion may be given in Evidence when proved upon Oath, by the Juſtice or his Clerk.

Juſtice can't detain above 3 Days under Examination.

A Juſtice of Peace may not detain in Priſon a Perſon ſuſpected only, but during a convenient Time to examine him, which the Law allows to be three Days. *Cro. Eliz.* 829. *Hill.* 43 *Eliz. Rot.* 1831. in *C. B. Cro. Eliz.* 239, 830. *pl.* 35.

A Wife

A Wife may not be examined or bound to give Evidence againſt her Husband, 6 *Co.* But Children may be examined againſt their Parents, and give Evidence at the Trial. *Dalt.* 408.

Examinations taken on Oath by Juſtices of Peace in one County, may be by them certified in another County, and there read and given in Evidence againſt the Priſoner. *Dalt.* 544.

The Examination of a Felon.

The Examination of *P. C.* of, &c. taken before me *W. K.* Eſq; one of his Majeſty's Juſtices of the Peace for the ſaid County, this Day, &c. — 2 & 3 P. & M. cap. 10.

THE *ſaid* P. C. *being charged before me by* S. C. *of*, &c. *with the felonious ſtealing out of the Houſe of the ſaid* S. C. *in*, &c. *ſeveral Goods*, viz. &c. *to the Value of*, &c. *on*, &c. *laſt paſt, he the ſaid* P. C. *upon his Examination now taken by me, denieth that he ſtole the ſaid Goods, or ever had them in his Poſſeſſion, or confeſſeth that he ſtole the ſaid Goods and ſold them to*, &c. *for*, &c. *and further ſaith not.* — These Examinations are to be taken before any Offender ſhall be committed.

The Informations of the Witneſſes muſt be taken ſeverally, and upon Oath, thus:

The Examination of *P. C.* of, &c. taken upon Oath before me *W. K.* Eſq; one of His Majeſty's Juſtices of the Peace for the County aforeſaid, the Day, &c. — 2 & 3 P. & M. cap. 10.

THIS *Examinant ſaith, that on*, &c. *laſt paſt, he ſaw* P. C. *of*, &c. *enter the Houſe of* S. C. *and there feloniouſly ſteal one Silver Tankard marked*, &c. *and alſo*, &c. *belonging to the ſaid* S. C. *and that this Examinant being at that Time a Servant to the ſaid* S. C. *endeavoured to apprehend the ſaid* S. C. *but there being no other Perſon in the Houſe belonging to the aforeſaid* S. C. *the ſaid* P. C. *very much beat and wounded this Examinant, and left him bound on the Floor whilſt he made his Eſcape with the Plate and Goods aforeſaid: And this Examinant further ſaith not.*

Excise.

IF Officer have Cauſe to ſuſpect Coffee, &c. to be fraudulently concealed in any Part of *Great Britain*, except within the Bills of Mortality, on Oath before a Juſtice of Peace, ſetting forth the Ground of his Suſpicion, he may by ſpecial Warrant impower him by Day or by Night; but if in Night-time with a Conſtable, to enter all ſuſpected Places, and ſeize and carry away all ſuch Coffee, &c. as forfeited with all Baggs, &c. and if any Perſon obſtruct the Officer in Entring or Seizing, he forfeits 100 *l.* 10 *Geo.* 1. *cap.* 10.

A Juſtice of Peace may adminiſter the Oath to a Coffee Officer, and muſt give a Certificate *gratis*.

See more of Excise, Tit. Brewer, &c.

Execution. See Judgments.

IF Execution is reſpited by the Judge for five Weeks, and the Time expires, and then the Seſſions is adjourned, and the Judge grants a further Reprieve, 'tis good; tho' by the Adjournment the Commiſſion of Gaol-Delivery is determined. *Dyer* 205.

Extortion.

What is Extortion

IS an Offence where an Officer by Colour of his Office takes Money, or any other Thing of Value not due, or more than is due, or before 'tis due; and in a large Senſe where any Perſon is oppreſſed by an extorting Power, or under a falſe Pretence of Right.

An Arch-deacon is guilty of this Offence, taking more than his Fees by Colour of his Office, or any Fees or Reward for Expedition, or exacting an Oath, or any other undue Thing.

One can't be indicted, and tried the ſame Seſſions.

Bailiff to a Sheriff was indicted at Seſſions for taking 20 *s.* of *J. S. extorſive colore officii*, and was committed and pleaded, and was the ſame Day in Seſſions tried and convicted, and on a Writ of Error Judgment

ment was reverſed, becauſe a Man can't be indicted and tried the ſame Seſſions. *Cro. Car.* 4, 3, 8. *Jones* 379, 380, but the Damages are to be recovered by Action.

By Stat. 23 *H.* 6. *c.* 10. Any taking more than 4*d.* for an Arreſt, forfeits treble Damages to the Party grieved, and alſo 40 *l.* between King and Proſecutor; but the Jury muſt find the ſingle Damages, and then the Juſtices may treble them. *Sid.* 91. *vid. Stat.*

A Coroner taking more than his Fees, or refuſing to view the Body before he had 6*s.* 8*d.* for himſelf, and 2*s.* for his Clerk, he was committed, *&c.* 3 *Inſt.* 149.

A Gaoler taking more than his Fees is guilty of Extortion.

A Juſtice of Peace convicted of Extortion was fined 1000 Marks, committed during the King's Pleaſure bound to his good Behaviour for a Year, and ordered to acknowledge his Offence publickly at the next Aſſizes, and turned out of Commiſſion.

A Juſtice of Peace convicted of Extortion, fined 1000 Marks.

'Tis Extortion in the Ordinary, to take any Thing for a *Probate* of a Will or Adminiſtration, where the Goods of the Deceaſed exceed not the Value of 5 *l.* ſave only 6*d.* for the Regiſter.

Or to take more than 2*s.* 6*d.* where the Goods exceed 5 *l.* but not 40 *l.* and the Regiſter 12*d.* or the Regiſter may refuſe the 2*s.* 6*d.* and take a Penny for every ten Lines of the Will, each Line containing ten Inches in Length.

Or any Thing for a Mortuary where 'tis not payable by Cuſtom. 21 *H.* 8. *c.* 5.

A Sheriff taking more than his Fees, or any Thing of a Conſtable for bringing a Felon to Gaol, is guilty of Extortion. Extortion in the Spiritual Court, is puniſhable at Common Law. *Palm.* 318.

No Sheriff, Bailiff, *&c.* ſhall carry any Perſon in his Cuſtody to any Tavern, Ale-houſe, *&c.* ſo as to put him to any Charge more than what he ſhall willingly call for, and freely give; nor take any more than reaſonable for his Lodgings and Expences. 22 & 23 *Car.* 2. *c.* 20.

Extortion is an Offence at Common Law puniſhable by Fine and Impriſonment.

And where any Officer at Common Law, or in the Eccleſiaſtical Court ſhall take any other, or more Fees than what are allowed by Statute or lawful Uſage, he may be puniſhed at the Seſſions by Indictment, by the Juſtices without any ſpecial Commiſſion. *See* 21 *H.* 8. *c.* 5. 23 *H.* 8. *c.* 5, 6, 9.

22 & 23 *Car.* 2. *c.* 23. What Fees are allowed to Ordinaries, &c. for Probate of Wills, and granting Administrations. *See* 4 *Inst.* 336.

'Tis Extortion to take one Penny from the Party arrested.

Any Thing taken *colore Officii* is Extortion, but *virtute Officii* is allowable. *Cro.* 57.

If the Gaoler takes any Thing of one in Prison, to let him have Liberty, Easement, or Favour, it is Extortion. *Cro.* 59. *a.*

	l.	*s.*	*d.*
Justices of Peace usually take for Recognizance of the Peace.	0	2	0
For Recognizance to Bail a Prisoner	0	2	0
For a Supersedeas of the Peace	0	2	0
Warrant of the Peace	0	2	0
Release of the Peace	0	2	0
Warrant	0	0	4
For each Rioter recorded and fined at his Discharge	0	1	0
Mayors take for: Recognizance of an Alehouse Keeper	0	1	0
Mayors take for: Sealing Bushels and other Measures	0	0	4
Mayors take for: Sealing an Hundred Weight, and proportionably	0	0	4

Mayors take for: And if he takes more for sealing it again, forfeits 40 *s.* between the King and Party grieved, which Default Justices of the Peace have Power to hear and determine. 7 *H.* 7. *c.* 3.

By 11 *H.* 7. *c.* 4. two Justices (*Quorum unus*) may hear and determine the Defaults of Mayors, &c.

The Fees in Sessions vary according to the Custom of the Place.

Keeper of a Pound: Taking above 4 *d.* for pounding a Distress, forfeits 5 *l.* to the Party grieved. 1 & 2 *P.* & *M.* *c.* 12.

Sheriff taking more than 12 *d.* for every 20 *s.* of the yearly Value of the Lands not exceeding 100 *l. per Ann.* and 6 *d.* if above, for executing an *habere facias possessionem aut seisinam*, or taking Poundage for executing a *Ca' Sa'* or charging one in Execution for a greater Sum than really due to the Plaintiff, and being convicted thereof, shall be guilty of Extortion, and shall forfeit treble Damages to the Party grieved, and double the Sum extorted, and 200 *l.* more; one Moiety to the King, the other to the Prosecutor. *See* Sheriff.

The

The Toll-gatherer is to take but 1 *d.* for one Contract, and ſetting down the Names of the Parties thereunto, and 2 *d.* for a Note of Entry.

Liberties have been ſeized for detaining Priſoners after the Fees paid. 9 *Co.* 96.

Fees of Wine Licenſes are for the Licence 5 *s.* for the Acquittance 4 *d.* for the Bond 6 *d.* on Pain of 10 *l.* 12 *Car.* 2. *c.* 25.

Indictment againſt a Coroner for taking exceſſive Fees.

Eſſex, ſſ. JURR', &c. quod A. B. de M. in Com' prēd Gen' 30 die Decembris, Anno Reg', &c. unus Coronator dicti Dom' Reg' in & pro dicto Com' adtunc exiſtens apud M. prēd in Com' prēd colore Officii ſui prēd extorſive cepit pro feodo ſuo 30 s. de quodam C. T. in dicto Com' Generoſo in & pro executione Officii Coronatoris prēd ſuper viſum corporis T. B. nuper de M. prēd qui quidam T. B. viceſimo nono die Decembris prēd apud M. prēd per quandam carucam in & ſuper caput ejus curren' per infortunium occiſus fuit in Magnum dicti Dom' Reg' contemptum contra formam Statut', &c. & contra pacem & Coron' ſuas, &c.

Indictment for Extortion in a Gaoler.

Eſſex, ſſ. JURR', &c. quod A. B. de Paroch' de M. in Com' prēd per J. S. Conſtabularium ejuſdem Paroch' virtute cujuſdam Warranti ſub manu & Sigillo C. R. adtunc & adhuc un' Juſtic' Dom' Reg' ad pacem pro Com' prēd conſervand' Aſſign' & eidem J. S. direct' captus fuit 30 die Decembris, Anno, &c. pro ſuſpicione cujuſdam felonie per ipſum A. B. perpetrat' fuiſſe & per ipſum C. R. eodem die & Anno' commiſſus fuit G. C. cuſtodi Gaole prēd Dom' Reg' Com' prēd ſub cuſtodia ipſius G. C. pro ſuſpicione prēd ſalvo cuſtodiend' idemque A. B. in priſona illa ſub cuſtodia prēd G. C. a prēd tempore quo commiſſus fuit ad priſonam prēd per unum Menſem extunc proxime ſequentem pro eadem ſuſpicione ſub cuſtodia a prēd' G. C. detentus fuit, prædict' tamen G. C. ſtatutum inde fact' & penam in eadem content' minus ponderans decem libras legalis Monete Anglie

de eodem A. B. pro easiamento (Anglice Ease) & favore in Gaola pred' per idem tempus habend' die & Anno, &c. apud M. &c. recept' in contemptum Dom' Reg' nunc & contra formam Statut' pred' & contra pacem, &c.

Indictment against a Bailiff of a Hundred for taking Fees to excuse a Freeholder from appearing at the Assizes or Sessions.

Staff. ss. JURR' &c. quod J. T. nuper de L. in Com' S. Yeoman, existen' Ballivus Hundredi de H. in Com' pred' 7 die Maij, Anno Regni, &c. apud L. in Com' pred' pretertu & colore Officii sui pred' injuste & extorsive de quodam T. K. un' liberorum tenen' in & de Com' pred' quinq; Solidos cepit & extorquebat pro excusacon' attendenc' sive comparenc' pred' T. K. tempore Assizarum extunc prox' tenend' in & pro Com' pred' ubi revera pretat' T. K. in nullo Jur' panello per Vicecomitem Com' pred' returnat' fuit ubi etiam revera nulla talis pecunie summa pro feodo pretat' J. T. pro excusatione attendenc' sive comparenc' (Anglice the Appearance) pred' T. K. ad Assizas pred' debit' fuit pretat' J. T. in perniciosum exemplum aliorum Malefactorum ad grave dampnum ipsius T. K. & contra pacem dict' Dni' Regis Coron' & Dignitat' suas, &c.

Fairs.

OWner of a Fair or Market, not appointing a Toll-Taker, (where Toll is paid) or a Book-Keeper to sit there from ten a Clock in the Forenoon till Sun-set, shall forfeit 40 s. The Toll Taker, or Book-Keeper, not delivering in one Day after the Fair, &c. unto the Owner, a Note of all the Horses, &c. sold there, forfeit as before to be divided between King, and Prosecutor. Justices at Quarter-Sessions may hear and determine Offences aforesaid. 2 & 3 *P. & M. c.* 7.

He who keeps a Fair or Market in a Church-yard, shall be fined. 13 *Ed.* 1. *c.* 6.

Fairs and Markets are not to be kept on a *Sunday*. 27 *H.* 6. *c.* 5.

And

And the Lord of a Fair kept on a *Sunday*, may be indicted at the Assizes or Sessions. 27 *H.* 6. *c.* 5.

A Court of Pipowders by Law, is incident to every Fair for Contracts and Batteries. 3 *Cro.* 168.

No Person shall keep a Fair longer than he ought to do, on Pain of having it seiz'd into the King's Hand. 2 *Ed.* 3. *c.* 15.

False Tokens.

ANY falsely and deceitfully getting into his Possession Money or Goods of other Mens, by colour of false Tokens, or counterfeit Letters, and convicted thereof at the Quarter-Sessions, by Examination of Witnesses, shall suffer any corporal Punishment, except Death. 33 *H.* 8. *c.* 1. *Cro.* 83. *a.* 130. *b.*

The Punishment of getting Money, &c. by false Tokens.

Two Justices of Peace (*Quorum unus*) may bind over to the next Assizes or Sessions, any such suspected Persons, or may imprison or bail them until the next general Sessions.

One Justice of Peace may bind Cheats to their good Behaviour, so to Assizes or Sessions, or send them to the House of Correction, especially by Order of Sessions. *Dalt.* 63.

Counterfeiting a Pass punished by Pillory and Fine. *Dalt.* 62.

A Receipt by a bare Lie without a false Token not indictable. *Blac.* 79.

One indicted and fined for counterfeiting a Protection, though in the Name of one who had no Power to grant it. 1 *Sid.* 142.

He who shall personate any Seaman, Soldier, Artificer, or Labourer, in the Presence of His Majesty's Commissioners, or Officers, Paymaster, or Cashier, in Order to receive any Money due from the King, the principal Officer and Commissioners may arrest such Person, and imprison him till he shall find Bail to appear at next Assizes or Sessions, and being there convicted, shall forfeit double the Value, he would have gained, to the Governours of the Chest at *Chatham*, for the Use of the Poor maimed Soldiers, and be imprisoned for a Time, not exceeding one Year, at the Discretion of the Court. 22 & 23 *Car.* 2. *c.* 23.

He who shall counterfeit the Hands of the Treasurer, Comptroller, Surveyor, Clerk of the Accounts, or Commissioners of the Navy, or of the Signing, or

Vouching Officers of His Majesty's Navy, Ships, or Yards, to any Bill, Ticket, or Paper, or shall knowingly produce such Counterfeit Ticket, Bill, or Paper, the Commissioners and Officers of the Navy, may commit him to Prison, until he shall find Bail to appear at the next Assize or Sessions, there to be proceeded with according to Law. 22 & 23 *Car.* 2. *c.* 23.

L. was indicted for cozening *M.* for that *L.* being a Soldier under *J. L.* pretending he had a Power to discharge Soldiers, took Money of *M.* to discharge him. *Latch p.* 202. *Trin.* 3. *Car.* 1.

What to be done with one who cheats at Play.

If a Man cheats and cozens at Play with Dice, the Person cheated may arrest him, and carry him before a Justice of Peace, who is to bind him over to the Sessions, and there he is to be tried and punished: And if he brings an Action, he who arrests him, may justify, as all the Court held. *Mich.* 7 *Car.* 1. *Cro. Car.* 234. *Holliday* ver. *Oxenbridge.*

A working Goldsmith was indicted for falsifying Plate, by putting too much Copper in it, and by Fraud getting and setting on it the old Essay-Marks, and then selling it for Standard, and for this, the Goldsmith was fined 100 *l.* and put in the Pilllory 3 Days, at 3 several Places, with a Paper in his Hat, declaring his Crime, and was forejudged his Trade: And the Essay-Master was turned out of his Office, because he had not caused those old Marks to be broken, when the new Marks were made. *Kelyng.* 39. 16 *Car.* 2.

W. was indicted at Sessions for getting the Horse of another Man into his Possession, by using another Man's Name, and a false Token; Exceptions were taken to this. 1. That the Indictment doth not say it was *contra formam Statuti*; but the Court held it need not, because it is an Offence at Common Law. 2 *Rol.* Chief Justice took this Exception, that the Indictment was, that the Defendant did the Fact *nuper*, and that is so general a Word, that no Answer can be given to it, and for that the Indictment was quashed. *Mich.* 24 *Car.* 1. *Style* 45. *Rex* vers. *Wood.*

One was indicted on Stat. 33 *H.* 8. *c.* 1. for that he by a false Note in the Name of *J. S.* obtained into his Hands a Wedge of Silver of 200 *l.* Value; and tho' the Indictment varied in several Words from the Statute, tho' not in any Point material; yet because there was not any Recital or Misrecital of the Statute, but only by way of Inducement, the Court resolved it to be good enough, and adjudged him to stand on the

the Pillory at two Places, to pay 500 *l.* to be impriſoned during the King's Pleaſure, and to be bound with good Sureties for his good Behaviour. *Trin.* 15 *Car.* 1. *B. R. Cro. Car.* 564. *Terry*'s Caſe.

In *Bainham*'s Caſe there was an Indictment, for that *A.* borrowed 5 *l.* of the Defendant, and pawned Gold Rings to ſecure the Payment; and that at the Day, *A.* tendered the Money, but the Defendant refuſed to deliver up the Rings, and it was quaſh'd. 1 *Salk.* 379. *Dom. Regina* ver. *Jones. Trin.* 2 *Ann. B. R.*

Fees. See Extortion.
Felo de ſe. See Homicide.

Felony, Robbery, &c.

Felonies are { by Common or by Statute } Law.

Felonies at Common Law are,

1ſt, Againſt the Life of a Man. { Homicide of all ſorts; but that will come to be treated of more properly under that Title.

2dly, Againſt the Goods. { Larceny. Robbery. Piracy.

3dly, Againſt the Habitation. { Burglary. Burning.

4thly, Againſt publick Juſtice. { Breach of Priſon.

Felonies by Statute.

THO' many of them are interſperſed in this Treatiſe under their proper Heads, yet I will endeavour to collect them in a conciſe Manner in this Place, that the Reader may ſee all the Offences of this Nature, as it were at one View; and for Method's Sake, they ſhall be ranged Alphabetically.

Apprentices { Counterfeiting any Stamps on their Indentures is Felony, without Benefit of Clergy. 8 *Ann. c.* 9.

Imbezilling

Arms. Imbezilling the King's Arms, Munition, *&c.* to the Value of 20 *s.* is Felony, but does not cauſe Corruption of Blood, loſeth Lands but during Life, the Wife ſhall have Dower.

The Proſecution muſt be in one Year. 31 *Eliz. c.* 4. this cannot be determined in Seſſions.

Bail. To acknowledge Bail in the Name of another Perſon who is not prviy, or conſenting to it, is Felony, without Benefit of Clergy. 21 *Jac.* 1. *c.* 26. but if taken *de bene eſſe* at a Judge's Chamber, and not filed, no Felony. *Sid.* 90.

Baſtardy. Concealing the Death of a Baſtard-Child, unleſs Proof be made by one Witneſs, that it was dead born. 21 *Ja. c.* 27. No Clergy.

Bigamy. Marrying a ſecond Husband or Wife, the firſt being living, is Felony. 1 *Ja.* 1. *c.* 11.

1. But this doth not extend to a Perſon whoſe Husband or Wife is beyond Sea, or to ſuch who ſhall abſent from one another in *England*, for the Space of 7 Years, with this Difference, that if the Abode be beyond Sea, then though either of 'em have Notice that the other is living, ſuch Notice is not material, but if in *England*, 'tis otherwiſe, for in ſuch Caſe the Party is not exempted from the Penalty of the Statute.

2. Nor does it extend to Perſons divorced *a Menſa & Thoro, cauſa adulterii*, but not *cauſa ſævitiæ*. *Mar.* 101.

3. Nor to ſuch whoſe former Marriage is by any Sentence in the Eccleſiaſtical Court declared void.

4. Nor to thoſe who have been married within the Age of Conſent, who afterwards diſagree to that Marriage.

If a Man marries a Woman beyond Sea, and is living, and his Wife marrieth another Husband in *England*, this is not within this Statute, becauſe the firſt Marriage cannot be tried here. *Sid.* 171.

Buggery.

Is an Offence againſt the Order of Nature committed between Perſons of the ſame Sex, or with Beaſts, and extends as well to Women, as to Men, and is made Felony without Clergy. 25 *H.* 8. *c.* 6. 5 *Eliz. c.* 17.

There muſt be *penetratio & emiſſio ſeminis*, for the one without the other will not make the Sin, and therefore the Indictment muſt be *quod carnaliter cognovit*, &c. My Lord *Audly*'s Caſe is not held to be Law now.

Agens & Patiens pari pœna plectantur, *viz.* hanged, unleſs the Party conſenting is within Age of Diſcretion, and then 'tis not Felony in him; and this may be the Reaſon why the Age of the Party is expreſſed in the Indictment.

Burglary.

Is a Breaking and Entry of a Manſion-houſe in the Night-time, with an Intent to commit Felony, whether ſuch felonious Intent be executed or not. *Moor* 660, but an Infant under the Age of Diſcretion, an Idiot, or a neceſſitous Perſon who ſhall enter a Houſe being compelled by Hunger, are not Burglars.

The Entring of a Houſe with the Doors open, is a Breaking in the Law, yet 'tis not Burglary, unleſs the Door, Windows, or Wall be broken, or the Latch drawn, or the Door unlocked; for if a Man comes into a Houſe, and enters into a Chamber, and there breaks open a Trunk, and ſteals Money, or other Goods, this is no Burglary; becauſe the Trunk was no Part of the dwelling Houſe; but if he breaks open the Chamber-door, or any Door of a Cupboard which is fixed to the Freehold, this is an actual Breaking the Houſe. *Keyling* 58, 59.

But Burglary may be committed without an actual Breaking, as by thoſe who watch to prevent a Diſcovery while their Companions break the Houſe.

By coming down a Chimney.

By entring with the help of a Key.

By

By entring the Door being open, and the Owner of the Houſe retiring to a Chamber which the Offender breaks open.

By breaking Glaſs in a Window, and hooking out Goods. *Anderſon* 114. *Moor* 660. *Pop.* 42, 52.

H. P. C. 81. By demanding Entry with a Conſtable or Sheriff's Officer, under legal Pretence, the Owner opens his Doors, then they bind the Conſtable, or Officer, and rob the Houſe; for this is in *fraudem legis*.

If a Servant within deſignedly open the Door or Window, and the Thief enter, 'tis Burglary in him, and Robbery in the Servant.

The Maſter lies in one Part of the Houſe, and the Servant in another Part, who in the Night draws a Latch, and enters the Chamber of his Maſter, with Intent to murder, or to commit a Rape, 'tis Burglary. *Hutton* 20. and *Longford*'s Caſe.

Burglary. By putting the Hand or a Hook in the Window, and taking out Goods.

By turning the Key when the Door is locked on the inſide.

The Church is a Manſion-houſe within the Meaning of the Law.

If a Man have a Leaſe of a Shop, which is in the dwelling Houſe of another, and the *Leſſee* worked there in the Day-Time, but laid in another Houſe, the Shop was broke open in the Night, and the Goods ſtoln, this is not Burglary, becauſe it was not a Manſion or Dwelling-houſe, for it was ſevered from the Houſe by the Leaſe. *Hutton* 33.

To break a Chamber in a College or Inns of Court by Night, though no Body therein, or the Chamber of a Gueſt broken by the Inn-keeper, with an Intent to rob, is Burglary: But *Somerſet-Houſe* or *White-hall* are *domus manſionales* of the King; and if a Chamber is broken open there, it muſt be ſo alledged in the Indictment, and not *domus manſionalis* of the Perſon who lodged in it. *Kelyng* 27.

So

So of a Barn or Stable contiguous to a Dwelling-houſe, but a Shop diſtinct from the Houſe is not.

Nor a Booth; but yet by a particular Statute, 'tis made Burglary to break it open.

And by a late Stat. to break open a Shop or Ware-houſe belonging, or uſed with the Dwelling-houſe in the Day-time, and taking Money or Goods to the Value of 5 *s.* tho' no Perſon is therein, is Burglary.

Where one intended to murder, and for that Purpoſe broke a Hole in the Wall in the Night, and perceiving where the Perſon was, ſhot at him thro' the Hole, but miſſed him, this was held Burglary. 1 *And.* 114, 115.

Entring in the Day-time, and lying privately till Night, then robs and departs, 'tis not Burglary; but if he breaks open any Door to get out, 'tis Burglary.

Burglary. By Stat. 23 *H.* 8. *c.* 1. Clergy is taken away when a Dwelling-houſe is broken open, and the Dweller within, and put in Fear.

By Stat. 18 *Eliz.* *c.* 6. Clergy is taken away in all Caſes of Burglary, and by Stat. 39 *Eliz.* *c.* 15. if a Houſe is broke open in the Day-time, and Money and Goods to the Value of 5 *s.* taken out of the Houſe or Out-houſe thereunto belonging, though no Perſon therein, yet 'tis Felony without Benefit of Clergy.

By Stat. 3 & 4 *W.* 3. *c.* 9. If any Perſon feloniouſly take away Goods, being in a Dwelling-houſe, any Perſon being therein, and put in Fear; or ſhall rob any Dwelling-houſe in the Day-time, any Perſon being therein; or ſhall be acceſſary to the ſame, or ſhall break any Dwelling-houſe, Shop, or Ware-houſe thereunto belonging, in the Day-time, and feloniouſly take away Goods to the Value of 5 *s.* though no Perſon therein; or ſhall counſel, hire, or command another to commit Burglary, ſhall not have Clergy.

Forty Pounds Reward is given for apprehending a Burglar, by 10 & 11 *W.* 3. *c.* 3. & 5 *Ann. c.* 31.

By 12 *Ann. c.* 7. If any Perſon enter into the Manſion or Dwelling-houſe of another, either by Day, or by Night, without breaking the ſame, with an Intent to commit Felony, or being in the Houſe commit any Felony, and in the Night breaks the Houſe to get out, he is guilty of Burglary, and ouſted of Clergy.

Any Perſon feloniouſly ſtealing Money or Goods to the Value of 40*s.* or more, being in the Dwelling-houſe or Out-houſe thereunto belonging, though the ſame were not actually broken open, and though any Perſon be, or be not in ſuch Dwelling-houſe, or Out-houſe, and the Aider or Aſſiſter therein, ſhall be guilty of Burglary, and ouſted of his Clergy.

Burglary. If two are indicted for Burglary, and one is found guilty of Felony, and the other of Burglary, 'tis not a good Verdict as to the Felony, becauſe the Jury might have found both guilty of Felony; but they cannot find one guilty of Burglary, and the other of Felony, upon the ſame Indictment and Evidence.

If two are indicted for the ſame Burglary, and one convicted, and the other acquitted, if he who was acquitted took any Goods out of the Houſe not mentioned in the Indictment, he may (notwithſtanding his Acquittal) be indicted for that Felony, becauſe the Facts are ſeveral Felonies. *Kelynge* 30 *Cr. El.* 583. *Cr. Eliz.* 900.

If any Perſon commits Burglary, Houſe-breaking, Felony in ſtealing Horſes, Money, Wares or Goods, from whom Clergy is taken away by Stat. 10 & 11 *W.* 3. *c.* 3. and being out of Priſon, ſhall diſcover two or more Offenders, and Convict them, he ſhall have a Pardon, which ſhall be a good Bar to an Appeal. 10 & 11 *W.* 3. *c.* 3.

'Tis

'Tis Felony at Common Law, maliciouſly and voluntarily to burn the Houſe of another.

'Tis not neceſſary that the whole Houſe ſhould be burnt; for 'tis Felony to ſet on Fire, and burn Part of it.

It muſt be done maliciouſly and voluntarily; for if 'tis done by Miſchance or by Negligence, 'tis not Felony.

Sometimes the Law implies Malice; as if the Offender intends to burn the Houſe of *A.* only, and by this means the Houſe of *B.* is ſet on Fire, this is Felony, for the Event ſhall be coupled to the Cauſe, which was malicious.

Burning of Houſes, &c.

'Tis Felony to ſet on Fire a Stack of Corn in *Northumberland*, *Cumberland*, *Weſtmoreland*, or *Durham*; and ſo 'tis in the Night-time to burn Barns, Stables, Ricks of Corn, Hay, &c. or any of the Out-houſes which are contiguous to the Dwelling-houſe, and the Offender is not to have Clergy. 22 & 23 *Car.* 2. *c.* 7.

But if a Barn ſtand remote, and is not Parcel of the Manſion-Houſe, then 'tis not Felony, unleſs it hath Hay or Corn in it.

He who is in Poſſeſſion of a Houſe by Leaſe, ſets it on Fire with an Intention to burn his Neighbour's Houſe, this was held to be no Felony by the Opinion of three Judges; but *Crook econtra. Cr. Car.* 376. *Holmes*'s Caſe, *Jones* 351. *Kelynge* 29.

Burning of Ships, &c.

A Captain, Maſter, or other Officer, or Mariner belonging to a Ship, and wilfully burning or deſtroying it, or procuring the ſame to be done, to the Prejudice of the Owner or Merchant, muſt ſuffer Death as a Felon; and if committed where the Admiralty has Juriſdiction, it ſhall be tried by Virtue of a Commiſſion under the Great Seal, in ſuch Places in the Realm as ſhall be therein limited; and ſuch Offender ſtanding Mute, or challenging above the

Burning of Ships, &c. Number of 20 Persons, shall suffer Death without the Benefit of the Clergy. 1 *Ann. c.* 9. Made perpetual by 4 G. 1. *c.* 12.

Cattle. Destroying Cattle, the Offenders shall suffer as in Cases of Felony. 22 *Car.* 2. *c.* 7.

Chases. Persons hunting in the Night-time in Chases, Forests, &c. disguised with painted Faces, and concealing the Fact on Examination, is Felony. 1 *H.* 7. *c.* 7.

Cloth. Stolen from the Tenters in the Night, 22 *Car.* 2. *c.* 5. no Clergy.

Cloaths. If any Person shall maliciously assault another in the publick Streets or Highways, with Intent to tear, cut, or spoil their Garments, he shall be guilty of Felony.

Coach-house. Stealing Goods out of it to the Value of 5 *s.* though not broke open, or assisting any Person to do it, either by Day or Night. 10 & 11 *W.* 3. *c.* 3. 3 *H.* 5. *c.* 1. 2 *H.* 6. *c.* 9.

Coin. Mixing blanched Copper with Silver to make it heavier, and resemble Gold; or receiving, or paying counterfeit milled Money, or Money unlawfully diminished, is Felony. By 8 & 9 *W.* 3. *c.* 26. but no Corruption of Blood, or Loss of Dower.

Any Person may cut, break, or deface Pieces of Silver Money, counterfeit or diminished. 9 & 10 *W.* 3. *c.* 21.

And by 6 & 7 *W.* 3. *c.* 17. a Reward of 40 *l.* is ordered for apprehending Money Coiners, Clippers, &c.

Corn. Burning Stacks of Corn, Ricks, &c. is Felony. 22 & 23 *Car.* 2. *c.* 7.

Deeds. To inroll a Deed in the Name of another Person without his Privity or Consent, is Felony without Clergy. 21 *Ja.* 1. *c.* 26.

Eyes. Cutting out an Eye, slitting the Nose, or cutting it off, or the Lip; or cutting off or disabling any Limb, or Member, with an Intent to maim or disfigure the Person, is made Felony without Benefit of Clergy, in the Actor, Counsellor, Aider or Abettor, being Privy to the Offence, by 22 & 23 *Car.* 2. *c.* 1. A-

Egyptians. Above 14 Years of Age remaining here a Month. 1 & 2 *Ph.* & *M.* *c.* 4, 5 *Eliz.* *c.* 20. no Clergy.

Eſcape. Priſoner ſuffered voluntarily to Eſcape being under an Arreſt for Felony, 'tis Felony in the Officer.

Exchequer Bills. Counterfeiting Exchequer Bills, Bank Notes, or any Indorſement, &c. or tendring ſuch Bills in Payment, knowing the Forgery, is Felony without Clergy. 8 & 9 *W.* 3. 7 *An.*

If any Perſon ſhall ſteal, or take by Robbery, any Exchequer Orders, or Tallies, or other Orders, intitling any other Perſon to any Annuity, or Share in any Parliamentary Fund; or Exchequer Bills, Bank Notes, South-Sea or Eaſt-India Bonds, Dividend Warrants, Bills of Exchange, Navy Bills or Debentures, Goldſmiths Notes, or other Bonds or Warrants, Bills or Promiſſory Notes, being the Property of any other Perſon, or Corporation, notwithſtanding the ſaid Particulars are termed in Law a Choſe in Action, it ſhall be conſtrued to be Felony of the ſame Nature, and in the ſame Degree, and with or without Benefit of Clergy, as it wou'd have been if the Offender had taken by Robbery any other Goods of like Value, and he ſhall ſuffer accordingly. Stat. 2 *G.* 2. But this Act does not extend to *Scotland*.

Nor ſhall any Attainder for any Offence made Felony by this Act, work any Corruption of Blood, Loſs of Dower, or Diſheriſon of Heirs.

This Act is to be in Force for five Years from the 29th of *June*, 1729, and from thence to the End of the then next Seſſion of Parliament.

Fines. To acknowledge a Fine in the Name of another who is not privy or conſenting, is Felony, without Clergy. 21 *Ja.* 1. *c.* 26. the Seſſions have no Juriſdiction of this Offence.

Forgery. Forging a Deed or Writing to the Intent the Inheritance of Land, may be defeated or charged, or the Title troubled, &c. after a former Conviction, made Felony. 5 *Eliz.* c. 14. no Clergy.

To falsely make, forge, or counterfeit, or procure the same, or wilfully act or assist in the false making or counterfeiting any Deed, Will, Testament, Bond, Writing Obligatory, Bill of Exchange, or Promissory Note for Payment of Money, or any Acquittance or Receipt either for Money or Goods, with Intention to defraud; or shall utter or publish as true, any false or counterfeit Deed, &c. knowing the same to be false, is Felony without Benefit of Clergy, by Stat. 2 G. 2.

Hawks. Stealing them, or finding, or concealing them, and not bringing 'em to the Sheriff to be proclaimed. 37 *Ed.* 3. c. 19. Clergy.

Horses. Destroying Horses in the Night-time, is Felony, but only wounding them forfeits treble Damages.

Houses. Malicious burning of Houses, &c. was made Felony by 22 & 23 *Car.* 2. c. 7. no Clergy.

And demolishing Meeting-houses, Dwelling-houses, &c. is Felony, no Clergy, by 1 G. 1. c. 6.

Jesuit. Receiving, retaining, or maintaining him knowingly. 27 *Eliz.* c. 2. no Clergy.

Judgment. Acknowledging or procuring to be acknowledged, a Judgment in the Name of another Person, is Felony. 21 *Ja.* 1. c. 26. no Clergy.

King. The King shall have all the Goods of Felons and Fugitives, and the Year, Day, and Waste of Lands, &c. 17 *Ed.* 2.

Conspiring to kill any of the King's Council, is Felony. 3 *H.* 7. c. 14. no Clergy.

Limb. Cutting off any Limb or Member with an Intent to maim or disfigure the Person. 22 & 23 *Car.* 2. c. 7. no Clergy.

Imbezilling

Lodgers. Imbezilling Goods, &c. is Felony. 3 & 4 *W.* & *M.* *c.* 9.

Lottery-Tickets. Forging or counterfeiting a Lottery-Ticket, or forging ſtanding Orders made and exchanged for Lottery-Tickets, or altering the Number or principal Sum of any Order, &c. is Felony, without Clergy. 8 *Ann.* *c.* 4. & 9 *Ann.* *c.* 23.

Marrying 2 Husbands or Wives. Marrying a ſecond Husband or Wife, the firſt being alive, is Felony. *Vide* Bigamy.

Noſe. Slitting or cutting the Noſe, or cutting off a Noſe or Lip, is Felony without Benefit of Clergy. 22 & 23 *Car.* 2. *c.* 7.

Poiſoning. Wilful poiſoning, if the Party die within the Year and the Day. 1 *Ed.* 6. *c.* 12. and the Aiders, Abettors, &c. ſhall ſuffer Death.

Popiſh Prieſt, *vide* Jeſuit.

Priſon. It is Felony for any Perſon, being in for Felony, to break Priſon. 1 *Ed.* 2. 3 *H.* 7. *c.* 14.

Privy Counſellor. Aſſaulting and ſtriking, or attempting to kill a Privy Counſellor when in Execution of his Office, is Felony without Benefit of Clergy. 9 *Ann.* *c.* 16.

Rape. To commit a Rape, was Felony at Common Law; *Co. Lit.* 123. 3 *Inſt.* 60. but by the Stat. of *Weſtminſter* 1. *c.* 13. it was made a Miſdemeanour only puniſhable by Fine and Impriſonment; but ten Years afterwards by Statute of *Weſtminſter* 2. *c.* 34. it was made Felony again.

If the Woman is under 10 Years old, tho' ſhe conſent, by 18 *Eliz.* *c.* 7. if above 10 Years, and not conſenting to do the Act, tho' ſhe doth conſent after 'tis done.

But in this ſubſequent Conſent, the Husband may appeal. 6 *Ric.* 2. *c.* 6. no Clergy by 18 *Eliz.* *c.* 7. upon Conviction, Confeſſion or Out-lawry; and tho' ſhe will not proſecute, yet the Husband may, and if ſhe have none, then the Father or next of Kin may appeal.

Rape.

The Husband may profecute for a Rape upon his Wife, tho' ſhe be dead, and tho' ſhe be divorced, *cauſa frigiditatis. Mich.* 43 *Ed.* 3. *f.* 23. *Lib. Aſſiz.* 44. *f.* 285.

In *Scotland* the Woman ought to complain the ſame Day, or Night in which ſhe was raviſhed, and by our Law ſhe ought to complain in forty Days afterwards, but rather immediately, for Concealing it implies a Conſent before the Fact; ſo alſo, if ſhe doth conceive with Child.

Thoſe who aſſiſt in committing a Rape, being preſent, are Principals. 12 *Rep.* 37. *Savile* 42.

It was a Doubt whether a Rape could be committed on a Girl of 7 Years old, but if ſhe had been 9 Years, it was no Queſtion. *Dyer* 304.

Anno 9 *Car.* 1. One *Martin Page* was indicted at the *Old-Baily*, for that he *carnaliter cognovit* an Infant under the Age of 10 Years. At his Trial the Jury would not find him guilty, becauſe it was not proved he entred the Body of the Child; but he having very much abuſed her, the Court ordered an Indictment of Battery to be exhibited againſt him, which was tried at the Bar; and he was found guilty, and fined 100 Marks, and ordered to ſtand in the Pillory, *&c.* and to be bound with Sureties for his good Behaviour during Life, and committed during the King's Pleaſure.

If a Woman conſenteth for fear of Death, 'tis a Rape, becauſe the Conſent ought to be free and voluntary.

A Woman may juſtify killing a Man attempting to raviſh her.

In an Appeal of Rape, by Virtue of the Statute *Weſtm.* 2. *c.* 34. it was objected, that the Appellant had counted, that on ſuch a Day, and in ſuch a Year and Pariſh, the Appellee *eam rapuit & carnaliter cognovit*, without ſaying *felonice*; neither did ſhe aver, that ſhe did not Conſent either before or after the Fact, and for this Reaſon it was held ill. Ac-

Recognizance. Acknowledging a Recognizance in the Name of any Perſon without his Knowledge and Conſent, is Felony. 21 *Ja.* 1. *c.* 26. no Clergy.

Records. Imbezilling of Records made Felony, by 8 *H.* 6.

Riots. Rioters being 12 in Number, not diſperſing within an Hour after Proclamation, are guilty of Felony, without Clergy. 1 *Geo.* 1. *c.* 5.

Recoveries. Suffering a Recovery in the Name of another, is Felony, no Clergy. 21 *Ja.* 1. *c.* 26.

Reſcous. Reſcous of a Priſoner taken out of any pretended privileged Place, and he who made the Reſcous not paying 500*l.* within a Month after Conviction, muſt be tranſported, and if he Return within 7 Years, 'tis Felony. 8 & 9 *W.* 3. *c.* 27.

Reſcuing of Felons deliver'd to be tranſported, is Felony; and if any Felon who has been tranſported ſhall be afterwards found at large in any Part of *Great Britain*, without lawful Cauſe, before the End of the Term for which he was tranſported, he ſhall ſuffer Death as a Felon.

Robbery. Robbery is a felonious and violent taking away Money or Goods from the Perſon of another to any Value, putting him in Fear, for without putting in Fear, 'tis no Robbery. *Dyer* 224. and by Stat. 13 *Ed.* 1. *c.* 1. a Hue and Cry is to be made from Town to Town, and County to County, &c. after the Robbers.

'Tis the Violence and putting in Fear, diſtinguiſhes this Offence from a Cut-Purſe, which is *Clam & ſecrete.* 3 *Inſt.* 68.

All that are in Company where the Robbery is committed by one of them only, are Principals. And where ſeveral come to rob a Man, and one of them committeth the Fact out of Sight of the others, and afterwards returns to his Companions, it is Robbery in them all. 1 *And.* 116.

Commanding a Perſon to deliver Money, &c. and he doth accordingly, is a Taking, and a Robbery, altho' the Thief do deliver the Thing taken back again to the Owner.

But an Aſſault without taking any thing from the Perſon, is no Robbery; tho' if a Man be purſued, and endeavour to make his Eſcape, wherein he lets fall his Hat or his Money, and the Thief takes it up; this in Law is a Taking from the Perſon, and Aſſaulting a Man, and putting him in Fear, and then driving away his Cattle in his Preſence, is a Taking from his Perſon, and a Robbery.

A Man delivers a Sum of Money upon the Highway, ruled to be no Robbery, unleſs it be found that the Perſon was put in Fear. *Dyer* 224.

Robbery.

If a Servant is robbed of his Maſter's Goods in the Sight of his Maſter, it ſhall be taken to be a Robbery of the Maſter, for the Property was in the Maſter, altho' the Money was in the Hands of the Servant. *Style's Rep.* 318.

When a Servant is robbed, he muſt be ſworn as to the Robbery.

And if the Robbery be done by Daylight, whether before or after Sun-riſing or ſetting, the Hundred is chargeable. 2 *Cro.* 106.

When a Perſon is robbed, in order to ſue the Hundred, he muſt take the following Method; he muſt give Notice with the moſt convenient Speed to the next Village, or to ſome Perſon inhabiting near the Place where the Robbery was committed; he ought to commence his Suit at the End of forty Days, and within one Year after the Robbery committed; and he muſt, within twenty Days before the Action be brought, be examined on Oath before a Juſtice of Peace; for he may in this Caſe be a Witneſs in his own Cauſe, and may be admitted to give Oath how much Money his Servant had. 27 *Eliz. c.* 13. and if he knows any

any of the Parties, muſt enter into a Recognizance to proſecute. If a Juſtice of Peace refuſes to examine a Perſon robbed, an Action will lie againſt him upon the Stat. 27 *Eliz. c.* 13.

A Robbery was committed in *Com' Berks*, and the Oath was made in *London* before a Juſtice of Peace, who lived in *Berkſhire*, and held to be Good, though not made in *Com' Berks'*. *Cr. Car.* 211.

If any Robbery be begun in the Day-time (except on a *Sunday*) but if not ended till Dark-night, or if a High-way-man oblige a Waggoner in the Day-time to drive his Waggon out of the Way, and rob in the Night, theſe ſhall be adjudged Robberies in the Day, becauſe the firſt Seiſure makes it ſo, for it is accounted one continued Act, and ſhall relate to the Beginning of it; and therefore in all theſe Caſes the Hundred is chargeable. *Sid.* 263.

Robbery. A Robbery ſhall be ſaid to be done in that Hundred where the Party is firſt ſet upon, altho' his Goods be taken from him in another Hundred; but if a Man is ſeized by Robbers in one Hundred, and carried into another, and there he was robbed; there the Action muſt be brought againſt the Hundred where he was robbed, becauſe the Statute mentions particularly the Hundred, where the Robbery was committed, ſhall be liable to take one of the Robbers within forty Days, or pay the Money loſt. *Hil.* 1 *Ann. B. R.* Hundred of *Baſingſtoke*'s Caſe.

Where a Man is ſeized in one Hundred, and carried into a Dwelling-houſe inhabited in another Hundred, and there robbed, neither Hundred is liable, becauſe the Statute does not extend to Robberies in Houſes. 3 *Leon.* 350.

But if one of the Robbers be apprehended by the Party robbed, or by any other Perſon within forty Days, the Hundred ſhall be diſcharged. *Co.* 179.

Robbery.

Immediately on Notice of a Robbery committed, Hue and Cry is to be made from Town to Town, &c. and the Conſtable on the Parties being deſcribed, is to call on the Pariſhioners of his Precinct to aſſiſt him in the Purſuit, and if the Offender be not there, he muſt give Notice to the next Conſtable, who is to do the ſame as the firſt, &c.

Perſons neglecting to make Hue and Cry, may be fined and impriſoned.

And the Inhabitants of every Hundred where the Hue and Cry ſhall ceaſe and neglect to be made, ſhall anſwer one Moiety of the Money, and Damages, which ſhall be recovered againſt that Hundred where the Robbery was committed, and payable to the Inhabitants of ſuch Hundred. 27 *Eliz.* c. 13.

Where Perſons travel on the Lord's Day, and are robbed, there the Hundred is not chargeable, yet Hue and Cry ought to be made to apprehend the Robbers; for they are anſwerable for the Value to the King. 29 *Car.* 2. c. 7.

Any Perſon who ſhall apprehend and proſecute a Highway-man to Conviction, ſhall on producing the Certificate of the Judge before whom the Party was convicted, receive of the Sheriff of the County where the Robbery was committed, the Reward of 40 *l.* and be entitled to the Horſe, Furniture, Arms, Money, &c. of the Highway-man, unleſs they were ſtoln from other Perſons, in which Caſe the Property is not altered; and if any one is kill'd in taking a Highway-man, thoſe who have a Right to adminiſter, ſhall have the 40 *l.* 4 & 5 *W.* & *M.* c. 8.

Sacrilege.

Stealing any Thing out of a Church is Felony without Clergy, and that at Common Law.

Sea and Sea-men.

Subjects in paſſing over the Sea to a foreign Prince, in order to ſerve him. 3 *Jac.* 2. c. 4.

Captains

Sea and Sea-men. Captains and Mariners belonging to Ships, deſtroying the ſame to the Prejudice of the Owners, and Merchants, ſhall ſuffer Death as Felons. 1 *Ann. c.* 9.

Servants. Other than Apprentice embezilling the Goods of his Maſter to the Value of 40 *s.* delivered to him, &c. 21 *H.* 8. *c.* 7. after Deceaſe of his Maſter ſpoiling Goods, &c. 33 *H.* 6. *c.* 1. and not appearing in *B. R.* upon Proclamation, he hath Clergy by the Stat. of 1 *Ed.* 6. *cap.* 12.

Receiving Maſter's Rents, and going away not within the Statute.

Not to extend to Apprentices under 15 Years of Age by 12 *Ann. c.* 7.

Sheep. Sending them beyond Sea after a former Conviction. 8 *Eliz. c.* 3. Clergy.

Deſtroying or killing them in the Night. 22 & 23 *Car.* 2. *c.* 7.

Ships. Wilful caſting away a Ship, or cauſing the ſame to be done, or making Holes in the Bottoms or Sides, tending to the Loſs of the Ship, is Felony. 12 *Ann. c.* 18.

Shop. Breaking a Shop in the Day-time, and taking to the Value of 5 *s.* 3 & 4 *W.* & *M. c.* 9. tho' he doth not break it in the Day-time, yet if he take the Value of 5 *s.* 11 *W.* 3. *c* 3.

Soldiers. Wandring. 32 *Eliz. c.* 17. no Clergy.

Departing from a Captain without Leave. 18 *H.* 6. *c.* 19. 2 *Ed.* 6. *c.* 2. Clergy.

Officer or Soldier out of *Great Britain* raiſing a Mutiny, or refuſing to obey a ſuperiour Officer or reſiſting any Officer in the Execution of his Office, or drawing, ſtriking, or offering to draw or lift up any Weapon againſt his ſuperiour Officer, ſhall be guilty of Felony. 7 & 10 *Ann.* the ſaid Felony to be tried in *B. R.* or before Commiſſioners aſſigned by the Crown. 10 *Ann. cap.* 10.

Stable. Stealing Goods to the Value of 5 *s.* out of a Stable, tho' not broke open, or aſſiſting to do it by Day or Night. 10 & 11 *W.* 3. *c.* 3.

Stamps. Counterfeiting the Stamps of Parchment, Vellom, Paper, &c. or knowingly ſelling ſuch counterfeit Stamps. 9 & 10 *W* 3. *c.* 25. no Clergy.

Stealing Goods hired to Uſe. Stealing any Goods or Chattels which by Contract or Agreement, the Party was to uſe, is Felony, by 3 & 4 *W.* & *M.* *c.* 9. now made perpetual, by 6 & 7 *W.* 3. *c.* 14.

Statute. To acknowledge a Statute in the Name of another not privy, &c. is Felony. 21 *Jac.* 1. *c.* 26. no Clergy.

Tongue. Cutting it out maliciouſly. 5 *H.* 4. *c.* 5. 22 & 23 *Car.* 2. *c.* 7. no Clergy.

Tranſporting of Rogues. A Rogue and he returning without Licence. 39 *Eliz.* *c.* 4. *Jac.* 1. *c.* 7.

The Court, before whom Felons ſhall be convicted liable to Tranſportation, may nominate two or more Juſtices of Peace to contract with any Perſon for the Tranſporting of ſuch Felons, and cauſe the Felons to be delivered by the Gaoler to the Perſon contracting, &c. and to order ſuch ſufficient Security as directed by 4 *G.* 1. *c.* 11. And all Charges about making Contracts, taking Securities, and conveying of Felons in Order to Tranſportation, are to be born by the Place for which the Court was held, which ordered the Felons to be tranſported, to be paid by the Treaſurer of the County, by Order of Quarter-Seſſions.

'Tis Felony to reſcue ſuch Felons or Offenders, as are ordered for Tranſportation; ſo alſo to aid or aſſiſt them in making their Eſcape. 6 *G.* 1. *c.* 23.

A Felon ordered for Tranſportation, who ſhall be afterwards at large within the Kingdom of *Great Britain*, without ſome lawful Cauſe before the Expiration of the Term, for which ſuch Felon was ordered to be tranſported, being lawfully convicted, is guilty of Felony, without Benefit of Clergy, and may be tried either in the County where apprehended, or from whence ordered for

for Tranſportation; and the Certificate of the Clerk of the Peace, containing the Effect and Tenor of the Indictment, and Conviction of ſuch Felon produced in Court, is a ſufficient Proof. 6 *G.* 1. *cap.* 23.

All Sureties for Tranſportation of Felons to be by Bond, in the Name of the Clerk of the Peace of the County, *&c.* and are to be proſecuted in their Names at the Charge of the County, *&c. ibid.*

Tranſporting of Rogues.

The King may at any Time diſpenſe with ſuch Tranſportation, and allow of the Return of ſuch Offenders, they paying their Owner ſuch a Sum as ſhall be adjudged reaſonable by any two Juſtices reſiding where ſuch Owner dwells; and where ſuch Offenders ſhall have ſerved their reſpective Terms, ſuch Services ſhall have the Effect of a Pardon, for that Crime for which they were tranſported. 4 *Geo.* 1. *c.* 11.

Ware-houſe. Breaking a Ware-houſe in the Day-time belonging to a Dwelling-houſe, and taking to the Value of 5 *s.* is Felony, by 3 & 4 *W.* & *M. c.* 9. and by 11 *W.* 3. *c.* 3. tho' not actually broken, no Clergy.

Warren. Hunting in a Warren in the Night-time with painted Faces.

In the Firſt Degree.

By Invocation or Conjuration of Evil Spirits, or conſulting, entertaining, or employing them.

Taking up a dead Perſon to be employed, tho' not actually uſed in Charm or Witchcraft.

Witchcraft. Doing any Witchcraft, Inchantment, or Charm, *&c.* whereby any Perſon is killed, deſtroyed, conſumed, or lamed, no Clergy. 1 *Jac.* 1. *c.* 12.

In the Second Degree.

By taking upon them by Inchantment, Charm, *&c.* to tell where Treaſure is, or where Goods loſt, *&c.* may be

Witchcraft. be found, or to provoke unlawful Love, or deſtroying Goods, or Cattle, or uſing Witchcraft to hurt any Perſon, tho' not done, the firſt Offence is Impriſoment for a Year, and Pillory, and being convicted thereof, and receiving Judgment, and offending again, 'tis Felony. 1 *Jac.* 1. *c.* 12.

It may be expreſſed by the Word *Incantatio* in an Indictment. *Latch* 156.

Woman. Taking away againſt her Will, and marrying her, but then ſhe muſt have Lands or Goods, *&c.* or be an Heir Apparent, and muſt be married or defiled. 3 *H.* 7. *c.* 2.

Taking in one County, and marrying in another, Trial muſt be where married, it cannot be in Seſſions.

Privy to Marriage, and not to the Force, not guilty, marrying with Conſent; but under the Force, Felony. 39 *Eliz. c.* 2. no Clergy.

Wood and Coppice. Maliciouſly ſetting on Fire, burning, or cauſing to be burnt, any Wood, Underwood or Coppice, or any Part thereof, Felony. 1 *Geo.* 1. *c.* 48.

Larceny what. Larceny is a felonious Taking and Carrying away the Goods of another, not from his Perſon, nor out of his Houſe, and is called Grand Larceny, when the Thing ſtolen exceeds the Value of 12 *d.* for which the Offender ſhall be hanged, unleſs he have his Clergy; and when 'tis under that Value it is called Petit Larceny, and is puniſhed with Whipping. 3 *Inſt.* 107.

But a Jury may find the Goods ſtolen of leſs Value than 12 *d.* and ſo convict the Priſoner of Petty Larceny only. *Hetly's Rep.* 66. *Bromly's* Caſe.

If a Man remove Goods in the ſame Houſe with a felonious Intent. If a Man break a Houſe in the Day-time, and therein take Goods and remove them from one Place to another in the ſame Houſe, with an Intention of Theft, it is Felony by the Common Law, the Taking them being a Poſſeſſion, and Stealing. *Kel. Rep.* 31. *Simſon's* Caſe.

A Lodger in an Inn roſe in the Night, and carried Linen out of his Chamber into another Room, with an Intent to ſteal it, and going to the Stable for his Horſe, the Servant took him therewith, and it was adjudged Felony. 27 *Ed.* 3. *lib. Aſſ. pl.* 39.

On

On an Indictment againſt a Perſon for digging up the Graves of ſeveral Perſons in the Night, and taking away their winding Sheets, and afterwards interring their Bodies again; It was reſolved, that the Property of the Sheets remained in the Owner, whoſe they were when made uſe of to that Purpoſe, and not of the dead Perſon; ſo the Indictment was good, and the Offender was found guilty of Felony, but had his Clergy. *Co. Lit.* 113. *Haine's* Caſe.

Property of Grave Cloaths in whom.

If a Tradeſman delivers Goods to his Men to work in his Houſe, and the Workmen ſteal away Part of them, it is Felony, notwithſtanding the Delivery to the Party, by Reaſon the Property is not altered by ſuch Delivery, but ſtill remains in the Owner.

But there is ſuch a Property in a Perſon to whom the Goods are delivered, that if they are ſtolen from him by a third Perſon, he may prefer an Indictment. *Mich.* 21 *H.* 7. One *A.* was indicted for ſtealing the Goods of *B.* and on the Trial, it appeared by Evidence, that the Goods were not *B.*'s, but that he had only the Poſſeſſion or Care of them being a Carrier, and the Goods ſtolen from him in his Journey; and it was adjudged in this Caſe, that though a Man has not an abſolue Property in the Goods delivered, yet he hath a Poſſeſſory Property ſufficient to maintain an Indictment. *Keil. Rep.* 39.

Poſſeſſory Property ſufficient to maintain an Indictment.

And an Indictment may be brought for ſtealing the Goods of a certain Perſon unknown. 12 *H.* 6.

Where a Felon ſteals Goods, and hides them, and afterwards flies for the Felony, thoſe Goods are not forfeited as Waifs in Law; becauſe Waifs are properly thoſe Goods which the Felon hath about him, and which he leaveth, being cloſely purſued, that he may more readily make his Eſcape; but ſtolen Goods which he hides may be taken by the Owner where ever he finds them. 5 *Rep. Foxley's* Caſe.

Where ſtolen Goods are not forfeited.

If one come to a Market pretending to buy a Horſe, and the Owner giveth him leave to ride the Horſe to try his Paces, and he rides away, this is Felony. So if I deliver Goods to a Porter to carry to ſuch a Place, and he carrieth them to another Place, and there openeth and diſpoſeth of them, this is Felony. The Law is the ſame if the Goods were carried to the Place appointed, and then embezilled; becauſe when they are brought to that Place the Contract is determined, and the Poſſeſſion is reveſted in the Owner; and ſo being taken away afterwards, 'tis Felony. *Keling* 82, 83.

Caſes of Felony.

Upon

Upon an Indictment of Felony, the Jury found that the Defendant came to the Shop of *A. C.* and asked to ſee two laced Cravats, which ſhe ſhewed, and delivered them into his Hands; then he asked the Price, and ſhe told him ſo much, he offered Half the Money, but ran away with the Goods in her Sight: Adjudg'd Felony, becauſe the ſubſequent Act in running away ſhews his Intention to take the Goods *felleo animo*, and tho' they were delivered to him by the Owner, yet in Law they were not out of her Poſſeſſion; becauſe the Contract was not perfected, and by Conſequence the Property not alter'd; ſo the Fact is as if he had taken the Goods openly out of the Shop and run away with them. *Raym.* 276.

By Statute 10 & 11 *W.* 3. *c.* 3. If any Perſon ſteal out of a Shop, Warehouſe, *&c.* any Goods privately and feloniouſly, of the Value of 5 *s.* or more, tho' ſuch Shop, *&c.* be not broken open, *&c.* or that ſhall aſſiſt in committing ſuch Offence, *&c.* ſhall not have the Benefit of Clergy.

9 *Geo.* 1. This Caſe happened at a Seſſions at the *Old Bailey:* A Shirt, the Property of *W. R.* was left in the Shop of *T. S.* to be ſent to one to mend, and it was ſtole by the Priſoner out of the Shop, for which he was convicted; and the Queſtion was, whether he ſhould have Clergy, and adjudg'd he might; for this was not Felony within that Statute, which was made as a Remedy for the Owners of Shops to preſerve their own Goods there by way of Trade, and conſequently ſtealing Goods caſually left there to the Value of 5 *s.* or more, was not Felony within that Statute, and without Benefit of Clergy.

'Tis Felony to take Money to help to ſtolen Goods, unleſs he apprehends the Felon.

By Stat. 4 *Geo.* 1. *c.* 11. He who takes Money, or any Reward, to help another to his Goods which were ſtolen, ſhall be guilty of Felony himſelf, and ſuffer as if he had ſtolen the Goods, unleſs he apprehends the Felon who did.

By Stat. 6 *Geo.* 1. *cap.* 23. He who ſhall diſcover, apprehend, and proſecute to Conviction of Felony without Clergy, any Perſon for taking Money, or other Reward, to help another to his Goods which are ſtole, ſuch Offender (not having apprehended the Felon who ſtole them) and brought him to Trial, and given Evidence againſt him, ſhall be entitled to a Reward of 40 *l.* for every Offender ſo convicted; and ſhall have the like Certificate and like Payments made without Fee, as any Perſon for apprehending, proſecuting, and convicting a Highway Man.

By

By Stat. 9 *Geo.* 1. *c.* 22. 'Tis Felony without Benefit of Clergy for any Perſon after 1 *June*, 1723, to appear armed, and having his Face blacked or diſguiſed. Abſtract of Black Act.

In any Ground incloſed where Deer have been or ſhall be kept.

Or in any Warren or Place where Hares or Conies have been kept.

Or in any High Road, Heath, Common, or Down; or ſhall unlawfully and wilfully hunt, wound, kill or deſtroy any Deer in Foreſt, Chaſe, Park, or encloſed Ground.

Or ſhall unlawfully rob any Warren or Place where Conies or Hares are kept.

Or ſhall unlawfully take away or ſteal any Fiſh out of any River or Pond, or break down any Head or Mound of a Fiſh-Pond whereby the Fiſh ſhall be loſt.

Or maliciouſly kill, maim, or wound any Cattle.

Or cut down or deſtroy Trees in any Avenue, Garden, Orchard, or Plantation, for Ornament, or Shelter, or Profit.

Or ſet Fire to any Houſe, Barn, Out-houſe, Hovel, Mow of Corn, Straw, Hay, or Wood.

Or maliciouſly ſhoot at any Perſon in any Dwelling Houſe, or other Place.

Or knowingly ſend any Letter with a fictitious Name, demanding any valuable Thing.

Or forcibly reſcuing any Perſon in Cuſtody for any of the ſaid Offences.

Or who ſhall by Gift, or promiſe of any Reward, procure any Subject to join with him in any ſuch unlawful Act.

By the ſame Statute it is Felony without Benefit of Clergy, for any Perſon guilty of any of the ſaid Offences after 2 *February*, 1722, not to ſurrender himſelf before 24 *July*, 1723, to a Juſtice of Peace where the Offence was committed, and voluntarily to make a Confeſſion and Diſcovery on Oath, of his Accomplices; and if he ſurrenders before 24 *July*, 1723. he ſhall be pardoned.

He who is charged with any of the ſaid Offences before two Juſtices, by the Oath of one Witneſs, the Juſtices ſhall certify ſuch Charge under their Hands and Seals to a Secretary of State, who ſhall lay the ſame before the King in Council; who may make an Order for the Offender to ſurrender himſelf to ſome Juſtice within 40 Days, which Order ſhall be publiſhed in the *Gazette*, and ſent to the Sheriff; and within ſix Days after ſhall be proclaimed by him, or his Officer, See the Form of the Certificate hereafter.

Officer, in two Market-Towns next the Place where the Offence was committed, and a Copy thereof fix'd in ſome publick Place there; and if the Offender ſhall not ſurrender himſelf purſuant to ſuch Order, he ſhall ſtand attainted of Felony without Benefit of Clergy; and the Judge of Aſſize, upon producing ſuch Order under Seal of the Council, may award Execution.

Concealing, abetting, or ſuccouring an Offender, after the Expiration of the Time he is to ſurrender himſelf, knowing him to be charged on Oath; and that he hath been required by ſuch Order to ſurrender himſelf; is Felony without Benefit of Clergy.

Offender taken before the Time expir'd, in which he is by the ſaid Order to ſurrender himſelf, ſhall be tried by due Courſe of Common Law.

The Inhabitants of the Hundred are chargeable to make Satisfaction for any Damages ſuſtained by any Perſon, and done by any Offender againſt the aforeſaid Act 9 *Geo.* 1. *c.* 22. the Sum to be recovered not exceeding 200 *l.* And if the Plaintiff recover in the Action, which muſt be brought within one Year after the Offence, againſt any Inhabitant, and take out Execution againſt him, all the other Inhabitants of that Hundred ſhall be ratably and proportionably taxed towards an equal Contribution for the Relief of the Defendant; which Tax muſt be raiſed by ſuch Ways, and in ſuch Manner as is preſcribed for raiſing Damages recovered againſt the Hundreds in Caſes of Robbery, by the Act 27 *Eliz.* *c.* 13. (*viz.*) two Juſtices (*Quorum unus*) may tax the Towns, Villages, Pariſhes, and Hamlets in the Hundred, to make an equal Contribution, *&c.*

No Perſon ſhall recover Damages by Virtue of this Act, unleſs they or their Servants, within two Days after ſuch Damage done them, give Notice of ſuch Offence to ſome of the Inhabitants of ſome Town, Village, or Hamlet, near the Place where the Fact was committed, and ſhall within four Days after ſuch Notice give in their Examination upon Oath, or the Examination upon Oath of their Servants, *&c.* before any Juſtice of Peace of the County, *&c.* where the Fact was committed, inhabiting within or near the ſaid Hundred, whether they know the Perſons that committed the Fact; and if they confeſs that they do know the Perſons, or any of them, then they ſhall be bound by Recognizance to proſecute the Offenders.

Where any one of the Offenders ſhall be convicted within ſix Months after the Offence, no Hundred, &c.

Durham to wit The examinacon of Mary Burrok wife of Ralph Burrok of Howbottle Labourer taken before me Ralph Bates one of his maiteys of the Peace for this County the 21st. day of August 1749

The said Mary Burrok being charg'd with the felonious stealing of several stooks of wheat out of the field of Margaret Robson of Howbottle aforesd. to the value of Twenty shillings; The the said Mary Burrok own'd before me that she stole eight sheaves out of the said field & has them now in her possession & that she had conveyed them on the topp of her haystack & further saith not

Acknowledged the day & years above mentioned before me

R Bates

her
Mary Burrok
mark

any Inhabitant thereof, ſhall be liable to make Satisfaction to the Party injured.

If any Perſon ſhall apprehend, or cauſe to be convicted, any of the Offenders above-mentioned, and ſhall be killed or wounded ſo as to loſe an Eye, or the Uſe of any Limb in endeavouring to apprehend ſuch Offenders, on Proof thereof at the General Quarter-Seſſions for the County, &c. where the Offence was committed, the Juſtices ſhall give a Certificate thereof to the Perſon ſo wounded, or the Executors, &c. of the Party ſo killed, which ſhall intitle them to receive of the Sheriff of the County 50 *l.* to be allowed the Sheriff in paſſing his Accompts; which the Sheriff is to pay within 30 Days from the Day on which the Certificate ſhall be ſhewn him on the Forfeiture of 10 *l.* to the Perſon to whom the Certificate is given; for which 10 *l.* as well as the 50 *l.* ſuch Perſon may bring his Action on the Caſe againſt the Sheriff, as for ſo much Money had and received to his Uſe.

Every Offence againſt this Act may be enquir'd off, and tried in any County in *England*, as if the ſame had been therein committed, but no Attainder of Felony by this Act ſhall make any Corruption of Blood, Loſs of Dower, or Forfeiture of Lands or Tenements, Goods or Chattels.

This Act ſhall be openly read at every Quarter-Seſſions, and at every Leet, or Law-day.

This Act was to continue in Force from 1 *June* 1723, for three Years, and from thence to the End of the next Seſſion of Parliament. But by Stat. made 12 *G.* 1. it is continued from the Expiration thereof for the Space of Five Years, and from thence to the End of the then next Seſſion of Parliament.

Goods delivered to a Perſon prentending to buy them.

If a Perſon deliver Goods to another, pretending to buy them, and he runs away with them, 'tis Felony, for the Goods were not properly out of the Poſſeſſion of the Owner by his Delivery, but by compleating the Contract, which was then only begun, and Running away ſhews a felonious Intention.

Or to a Carrier, for a Porter.

And if Goods are delivered to a Carrier, or Porter, &c. to carry to a certain Place, and he carrieth 'em to an other Place, and converteth 'em to his own Uſe, it is Felony; ſo if one come into a Market or Fair, &c. pretending to buy a Horſe, and the Owner giveth him leave to ride the Horſe, and try his Paces, and he rideth away with him, 'tis Felony. *Kelynge* 82, 83. and Stealing of Goods let to a Perſon in Lodgings, is Felony. 4 *W.* & *M.* *c.* 9.

Where Goods are delivered upon a ſpecial Truſt to deliver them at *A.* it is not Felony to convert thoſe Goods in a fraudulent Manner, until that Truſt is determined, no more than it could be Felony in a Carrier, by converting of Goods delivered to him to carry to ſuch a Place, before that Special Truſt was determined. *Paſ.* 8. *G.* 1. at the *Old Bayly.* 3 *Inſt.* 107. *H. P. C.* 61. *Staundf.* 25. *Kelynge* 81.

One who has the Poſſeſſion of Goods by Delivery of the Party, may be Guilty of Felony by taking Part *animo furandi*; as Carrier, Weaver, Miller, taking Part of Goods, Silk or Corn, *&c.* Reſolved 13 *Ed.* 4. *f.* 9 & 10. *Staunf. P. C.* 25. *a Kelyng* 35. 1 *Roll. Abr.* 73. cited *Hawk. P. C.* 1 *pt. c.* 33.

'Tis Felony to ſteal any Linen, &c. from Whitſter's Ground, &c.

By Stat. 4 *G.* 2. All Perſons who ſhall by Day or Night, felonioufly ſteal and take away, or wilfully or maliciouſly hire any other Perſon to ſteal from any Whitening or Bleaching Croft, Lands, Fields or Grounds, Bowking-houſe, Drying-houſe, or other Building or Place, made Uſe of by any Whitſter, Crofter, Bowker or Bleacher, for whitening any Linen, Fuſtian, or cotton Cloth, or Cloth made of Cotton and Linen Yarn, Linen or Cotton Tape, Incle, Filleting, Laces, or any Linen, or Cotton Goods, to the Value of 10 *s.* or who ſhall buy ſuch Goods knowing them to be ſtolen, being convicted thereof, ſhall be guilty of Felony, and ſuffer Death without Benefit of Clergy, unleſs the Judge or Court ſhall think it reaſonable, upon the Circumſtances of the Caſe, that the Offender ſhould be tranſported to ſome of the Plantations beyond the Seas; in which Caſe they, or any ſubequent Court, with like Authority to be holden for the ſame Place, may order the Convict to be tranſported for Seven Years, as is directed by the Acts of 4 *c.* 11. & 6 *G.* 1. *c.* 23.

And if any Perſon ordered to be tranſported, ſhall refuſe ſo to be, or break Priſon, eſcape, come on Shore, or return before the Time expired, he ſhall ſuffer Death. Stat 4 *G.* 2.

So to forge Mediterranean Paſſes, &c.

By Stat. 4 *G.* 2. If any Perſon ſhall falſely make, forge or counterfeit, or procure to be forged or counterfeited, or wittingly aſſiſt in making any Paſſes for any Ships whatſoever, commonly called *Mediterranean* Paſſes, or ſhall counterfeit the Seal, or the Hand of the Lord High Admiral, or of any Commiſſioner for executing the ſaid Office, to any ſuch Paſſes, or ſhall alter or eraſe any authentick Paſs, or ſhall utter as true any ſuch Paſſes, knowing them to be falſe, being convicted in any proper Court of *Great Britain, Ireland,* or

any of the Plantations, where ſuch Offence ſhall be committed, ſhall be adjudged guilty of Felony, and ſhall ſuffer Death without Benefit of Clergy.

May be inquir'd of in any County, &c.

The Crimes before mention'd committed in any Place, either within his Majeſty's Dominions or without, may be enquir'd of in any County of *Great Britain*, by Virtue of the King's Commiſſion of Oyer and Terminer, and Gaol-Delivery, or before any Court of Juſticiary in *Scotland*, in the ſame Manner, as if ſuch Offences were done within the County where the Offenders ſhall be tried. Stat. 4 *G.* 2.

Perſons ſtealing Lead, Iron Bars, &c. of Houſes, &c. to be tranſported, &c.

By Stat, 4. *G.* 2. All Perſons who ſhall ſteal, rip, cut or break, with Intent to ſteal any Lead, Iron Bar, Iron Gate, Iron Paliſado, or Iron Rail, being fixed to any Dwelling-houſe, Out-houſe, Coach-houſe, Stable, or other Building, belonging to a Dwelling-houſe or other Building, or fixed in a Garden, Orchard, Court-yard, or Fence, belonging to ſuch Building, ſhall be adjudged guilty of Felony, and be tranſported for Seven Years; and all Perſons aſſiſting in ſuch ſtealing or buying the ſame, knowing them to be ſtolen, are thereby declared to be liable to the ſame Puniſhment. Stat. 4. *G.* 2.

A legal Proceſs to get Goods fraudulently, Felony.

Felony may be committed by making Uſe of a Proceſs at Law, fraudulently to obtain Goods, *viz.* by procuring a Replevin where a Man hath no Property, and by that means getting a Horſe delivered to him, this is a felonious taking, ſo is getting Goods out of a Houſe upon an Ejectment, where a Man hath no Title. *Sid.* 254.

Where Reſtitution is to be made.

Where a Felon is convicted at the Proſecution of the Party robbed, or Owner of the Goods, the Juſtices have Power to award Reſtitution of the Goods ſtolen. *per Stat.* 21 *H.* 8. *c.* 11.

To deſtroy or kill Sheep in the Night-time, is Felony, Stat. 22 & 23 *Car.* 2. *c.* 7. and tranſporting Sheep beyond Sea, firſt Offence, Forfeiture of Goods, Impriſonment for one Year, &c. and the ſecond Offence, Felony. *per Stat.* 8 *Eliz. c.* 3.

Taking Fiſh in a Trunk or Pond, is Felony; ſo is taking Swans kept in a Pond, or private River.

And Things which have been *feræ Naturæ*, as Conies, Deer, Partridges, Pheaſants, &c. if made tame, are perſonal Goods, and 'tis Felony to ſteal them; ſo it is in taking young Hawks, or Pidgeons in their Neſts, where a Man hath a Property in them; ſo of Geeſe, Ducks, Turkeys, &c. 3 *Inſt.* 110.

Where feme covert excuſed of Felony.

If a Feme covert commit Felony by the Command of her Husband, and both are concerned in the ſame

Felony, the Wife is excuſed; but 'tis no Excuſe in a Servant to ſay he did it by the Order of his Maſter; and if a Woman commit Murder by the Conſent of her Husband, 'tis Felony. *Kel. Rep.* 31.

Cheapning Goods in a Shop, and then running away with, them is Felony. *Raym.* 275.

So Carrier and Porter diſpoſing of Goods delivered them to carry, guilty of Felony. *Blac.* 114. *Keel.* 82, 83.

So if a Shepherd ſteal Sheep, or a Butler Plate, or a Carrier Goods, tho' delivered them. *Black.* 115.

So if a Silk-Thrower imbezil Silk delivered him to work. *Kel.* 35.

But if a Wife alone ſteal Goods, or receive ſtolen Goods, or a Felon into her Houſe, or lock up Goods in a Cheſt, knowing them to be ſtolen, and her Huſband is not privy to it, this is Felony in the Wife. *Paſ.* 15 *E.* 2.

A Feme Covert can't ſteal her Husband's Goods; but if ſhe is taken away with them againſt his Conſent; 'tis Felony; ſo 'tis if ſhe deliver the Goods of her Husband to an Adulterer, this is Felony in him. 3 *Inſt.* 110.

Felonies done in one Reign may be proſecuted in another.

When Felonies committed in the Reign of one King, the Proſecution may be in the Reign of another; and where Felonies are committed in one County, and the Offender is taken in another, he may be impriſoned where taken, and removed, to be proſecuted where the Fact was done: But if he carry the Goods which he hath ſtolen with him, 'tis Felony in every County where they are carried. *Br. Coron.* 140. 7 *Co.* 2. *Bulwer's* Caſe.

If a Man felonioufly ſtricken in one County, and after die in another County, or where Goods are ſtolen in one County, and carried into another County, or where any Murder or Felony are committed in one County, and other Perſons ſhall be acceſſary in any other County, an Indictment found againſt ſuch Acceſſary in the County where ſuch Offence of Acceſſary ſhall be committed, ſhall be good, and the *Cuſtos Rotulorum* of the other County ſhall certify, under his Hand and Seal, to the Juſtices of Oyer and Terminer or Gaol-Delivery, whether the Principal be convicted or diſcharged of the ſaid Felony, *&c.* that they may proceed as if done in the ſaid County.

Officers may break open an Houſe to take a Felon, or any other ſuſpected thereof; and if an Officer hath a Warrant to take a Felon, who is killed in reſiſting, 'tis not Felony in the Officer; but if the Officer, is killed 'tis Murder. *Dalt.* 98, 289. *Cr. Fol.* 27.

For

For the more effectual Apprehending of Felons by Statute 10 & 11 *W.* 3. *c.* 3. it is enacted, That where any Perſon ſhall apprehend a Felon for ſtealing any Thing to the Value of 5 *s.* out of a Coach-houſe, Stable, or Warehouſe, either in the Day-time or in the Night, and the Offender ſhall be convicted thereof, ſuch Apprehender ſhall have a Certificate under the Hand of the Judge before whom ſuch Conviction was, ſetting forth the ſame, and within what Pariſh the Felony was committed, and the Perſon ſo taking or diſcovering the Felon; and if there are many Perſons concerned, the Certificate is to be divided into Shares. This Certificate may be aſſigned once and no more; but Perſons having made Uſe of ſuch Exemption ſhall not then aſſign over the ſaid Certificate; and the original Proprietor, or his Aſſignee, ſhall be diſcharged of all Pariſh Duties in the Pariſh and Ward wherein ſuch Felony ſhall be committed. It muſt be enrolled by the Clerk of the Peace of that County in which it ſhall be granted.

Apprehender of Felons ſhall have a Certificate, excuſing him from all Pariſh and Ward Offices, &c.

And if a Perſon happen to be killed in taking a Felon, he that has Right to his perſonal Eſtate ſhall have the Certificate.

By Stat. of 23 *Hen.* 8. *cap.* 1. Clergy is taken away from Principals and Acceſſaries in Robbery: And by Stat. of 25 *H.* 8. *c.* 3. Clergy was taken away from thoſe who were found guilty in any County of ſtealing Goods, if it appear to the Judge that he ought not to have Clergy, if he had been tried in the County where the Fact was committed.

A Man committed a Robbery in *Glouceſterſhire*, and fled into *Oxfordſhire*, where the Goods were taken upon him, and there he was indicted only for Felony, and found guilty to the Value of 10 *d.* and it appearing to the Court, that he had robbed the Perſon in the Highway, the Queſtion was, Whether he ſhould be hanged by the Statute of 25 *Hen.* 8. *c.* 3. or only whipped for Petit Larceny? and reſolved by all the Judges, that he ſhould be only whipped; becauſe the Statute extends only to ſuch who ſhall demand their Clergy, and ſays, that it ſhall be denied, if upon Examination it appear that there was a Robbery committed; but here he is found guilty of Larceny only, and ſo need not demand his Clergy. *Moor* 550. *Anno* 31 *Eliz.*

If the Owner of Goods ſtolen, after he hath made Complaint to a Juſtice or to a Conſtable, ſhall take

the Felon and the Goods upon an Hue and Cry, or otherwiſe, and ſhall then take his Goods, or compound with the Felon, or conſent to his Eſcape, this ſhall make him acceſſary after the Fact: But if, before Complaint made to a Juſtice, in Purſuit he retaketh the Goods, and ſuffereth the Felon to eſcape, this is a Miſdemeanor only, for which he may be fined. *Dalt.* 400. *Lamb.* 285.

If a Principal be acquitted or convicted of Manſlaughter, or in his own Defence, or is admitted to Clergy before Attainder, or is pardoned, or dieth, the Acceſſary is acquitted; but this muſt be before Attainder, or the Acceſſary ſhall be arraigned; and Acquital of one Acceſſary diſcharges the reſt. *Raym.* 477. *Dalt.* 359.

Where Principal and Acceſſary may be tried by the ſame Jury.

If an erroneous Judgment be given againſt the Principal, yet the Acceſſary ſhall be tried; and if both Principal and Acceſſary plead to the ſame Felony, they may be tried by one Jury; but Judgment muſt firſt be had againſt the Principal, and the Jury muſt acquit the Acceſſary if they find the Principal not guilty. *Dalt.* 339. *Cro. Car.* 409. And in Caſe the Principal doth not appear, or ſhall appear and ſtand mute, the Acceſſary may not be tried; and if he is not attainted the Acceſſary ſhall not be outlawed.

If a Man is convicted of Felony, or ſtands mute, or challenges above twenty Jurors, it ſhall be lawful to proceed againſt the Acceſſary, notwithſtanding the Principal had his Clergy, was pardoned, or otherwiſe delivered before Attainder. And every Acceſſary ſhall ſuffer the ſame Puniſhment, if convicted, or ſtand mute, or challenge above twenty Perſons, as he ſhould have ſuffered, if Principal had been attainted, by Stat. 1 *Ann. c.* 9.

If any Perſon ſhall commit Burglary, Houſe-breaking, or Felony in ſtealing Horſes, or any Money, Wares, or Goods, and being out of Priſon ſhall diſcover two more, who have committed ſuch Felony, or cauſe two more to be diſcovered, apprehended, and convicted, ſuch Diſcoverer ſhall have the King's Pardon, which ſhall be a good Bar to any Appeal to be brought for the ſame. 10 & 11 *W.* 3. c. 23.

Judge may commit Convicts of Felony to Houſe of Correction.

The Judge or Juſtices, before whom the Party ſhall be convicted of Theft or Larceny, for which the Benefit of Clergy is allowed, may commit him to the Houſe of Correction, or publick Work-houſe, there to be kept without Bail, not leſs than ſix Months, nor above

above two Years, from the Time of ſuch Conviction, and to work all that Time, or be whipped; and if ſuch Perſon eſcapes, and is retaken, two Juſtices of Peace, (*Quorum unus*) where he was retaken, may remand him to the Houſe of Correction, there to remain without Bail, not leſs than a Twelvemonth, and not exceeding four Years, to be accounted from ſuch Retaking: And if the Keeper of the Houſe of Correction ſhall not keep him to hard Labour, and correct him, then Proof thereof being made by Oath of one Witneſs before a Judge of Aſſize, he may remove him from his Office. 5 *Ann. c.* 6.

Taker of Felon ſhall have 40 l. Reward, and the Judge to ſettle the Proportions in Caſe of Diſpute.

If any one apprehend one guilty of Burglary, or felonious Breaking and Entring an Houſe in the Day-time, and ſhall proſecute him to Conviction, he ſhall, beſide the Reward given by the Stat. 10 *W. c.* 3. receive the Sum of 40 *l.* to be paid by the Sheriff within one Month after ſuch Conviction, upon tendering a Certificate ſigned by the Judge before whom the Offender was convicted. *Ibid.*

On a Diſpute between the Takers of a Felon, the Judge has Power to proportion the Reward by his Certificate. And if the Sheriff does not pay the ſaid Sum in the Time aforeſaid, then he forfeits to the Party grieved double the Sum he ought to have paid, to be recovered by Action of Debt, *&c.* with treble Coſts. *Ibid.*

And if any Perſon ſhall be killed in endeavouring to take ſuch Felon, then his Executor or Adminiſtrator, on Certificate from the Judge of Aſſize, or the two next Juſtices of the Peace, that the Perſon was ſo killed, ſhall receive the 40 *l.* as aforeſaid.

The 40 *l.* the Sheriff may deduct in his Accompts, but not the 80 *l.* or treble Coſts; and if he have not enough of the King's Money in his Hands, then he ſhall be repaid by the Treaſury, on Certificate from the Clerk of the Pipe. *Ibid.*

If a Perſon out of Priſon diſcover two of his Accomplices, he ſhall have his Pardon N. B. Witneſs for Priſoners to give Evidence on Oath.

If any Perſon out of Priſon ſhall diſcover two Houſe-breakers, ſo as they ſhall be convicted, he ſhall have the like Reward of 40 *l.* and all other Advantages which ſuch Taker or Proſecutor is entitled unto, and ſhall likewiſe have a Pardon, which ſhall be a Bar to an Appeal. *Ibid.*

Buyers of ſtol'n Goods, knowing them to be ſtolen, to ſuffer Death.

He who buys ſtolen Goods, knowing the ſame to be ſtolen, or who ſhall receive or conceal any Burglar, Felon, or Thief, knowing them to be ſo, ſhall be adjudged Acceſſary to the Fact, and being convicted ſhall ſuffer Death. But if the principal Felon cannot

not be taken, then the Buyer or Receiver of the Goods which he ſtole ſhall be proſecuted only for a Miſdemeanor, and fined and impriſoned, or ſuffer any other Corporal Puniſhment as the Court ſhall inflict, tho' the principal Felon is not convicted; and this ſhall exempt the Acceſſary from any farther Puniſhment, if it ſhall happen that the Principal ſhould afterwards be convicted. *Ibid.*

Felony without Clergy, to counterfeit Exchequer Bills, &c.

'Tis Felony without Benefit of Clergy, to forge or counterfeit any Exchequer Bill, or any Indorſement thereon, or to tender any ſuch Bill in Payment, or demand to have the ſame exchanged for ready Money by the Bank of *England*, or any Receiver or Collector, knowing the ſame to be forged or counterfeited, with an Intent to deceive any Perſon.

Officer may kill Felon eſcaping.

If a Felon eſcape from an Officer by Force, and he cannot otherwiſe retake him, he may be killed, and the Officer will be juſtified by his Authority.

Cutting Corn, and carrying it away at the ſame Time, is no Felony, but only Treſpaſs; but if it is laid aſide when cut, and afterwards carried away, 'tis Felony.

If a Felon be brought before a Juſtice upon Suſpicion, where a Felony is committed, tho' it appear he is not guilty, yet he is not to be diſcharged without a Trial.

Perſons convicted of Felony in a Dwelling-houſe in the Day-time to the Value of 5 s.

Perſons convicted of feloniouſly taking away in the Day-time Money, Goods, or Chattels of the Value of 5 *s.* in any Dwelling-houſe, or Out-houſe belonging and uſed to and with any Dwelling-houſe, tho' no Perſon be in the ſaid Houſe, or, *&c.* at the Time of ſuch Felony committed, ſhall not have their Clergy. 39 *Eliz. c.* 15. 11 *Co.* 36.

Any Perſon or Acceſſary robbing another, or taking away any Goods, *&c.* from a Dwelling-houſe, or that ſhall break any Dwelling-houſe, Shop, or Warehouſe in the Day-time, and feloniouſly take away Money, *&c.* to the Value of 5 *s.* tho' no Perſon be therein, being convicted, or being indicted, ſhall ſtand mute, or not directly anſwer to the Indictment, or ſhall challenge above twenty Perſons of the Jury, ſhall not have Clergy. 3 & 4 *W. & M. c.* 9.

Highwayman's Horſe, Money, *&c.* ſhall belong to the Apprehender, provided they were not feloniouſly taken and challenged. Felon out of Priſon diſcovering two others, ſo as they may be convicted, ſhall have Pardon. 4 & 5 *W. & M. c.* 8.

Note; The Hundred ſhall not be reſponſible for Robberies on the Lord's Day, but freſh Suit ſhall be made after the Offender. 29 *Car.* 2. *c.* 7.

Perſons

Perſons after Pardon for Felony ſhall be remanded back to Gaol, there to remain till they can find two Sureties to enter into Recognizance for good Behaviour for ſeven Years. 5 & 6 *W.* & *M.* *c.* 13.

Perſons committing Felony in Out-houſes to the Value of 5 s. no Clergy.

Any Perſon, by Night or Day, feloniouſly taking any Goods, Wares, or Merchandizes, of the Value of 5 *s.* out of any Shop, Ware-houſe, Coach-houſe, or Stable, tho' ſuch Shop, &c. be not actually broke open, and tho' the Owners of ſuch Goods, &c. be or be not in ſuch Shop, &c. to be put in Fear, or ſhall aſſiſt, hire, or command any Perſon to commit ſuch Offence, being indicted ſhall ſtand mute, or not directly anſwer to the Indictment, or ſhall challenge above twenty-three Perſons of the Jury, ſhall be debarred the Benefit of Clergy. 10 & 11 *W.* 3. *c.* 23.

Mariners wilfully caſting away Ships.

Captain, Maſter, or Mariner, &c. wilfully caſting away, burning, or otherwiſe deſtroying the Ship to which he belongs, or procuring the ſame to be done, to the Prejudice of the Owner, ſhall ſuffer Death as a Felon. Offences committed at Sea may be tried in any County of *England*.

Juſtices of Peace not comprehended under the general Words of Juſtices of Oyer and Terminer.

N. B. If any Thing be made Felony by Statute, the Juſtices of Peace cannot enquire of it, unleſs they are named; neither are they comprehended under the general Words of Juſtices of Oyer and Terminer, nor can they try ſuch as are indicted of Felony before the Juſtices of Gaol-Delivery, or of Oyer and Terminer. *Lamb.* 530.

Note; That in Caſe of Treaſon or Felony, the Party accuſed may require reaſonable Time to anſwer any Interrogatories, and having anſwered ought to have Copies of his Examination, if he deſire it. *Co. Inſt. Part* 2. *p.* 51. The Caſes of Juſt. *Richil*, 1 *H.* 4. and the Lord *Carew*, 16 *Jac.* 1.

Juſtices of *Middleſex* may enquire and determine of Murder, and Felonies within the Verge, for their Auis throughout the whole County. *Blac.* 118.

N. B. Where any Statute doth ſpecially give Authority to any other diſtinct Court, or to other Juſtices or Commiſſioners, (leaving out the Juſtices of Peace) to enquire of, hear, and determine, or to try Felons, &c. there the Juſtices of the Peace at their Seſſions cannot enquire thereof, &c. *Dalt.* 74.

It is Felony to break Priſon by any Perſon there in Cuſtody for Felony. 1 *Ed.* 2. *de frang. priſ.* 2 *Inſt.* 589.

He is ſuch a Priſoner that is under Arreſt, whether without the Priſon or within. *Dyer* 99. And if any

ſuch Priſoner make his Eſcape, this is Breaking the Priſon within the Act 1 *Ed.* 3. 17 *Co.* 2 *Inſt.* 589.

Tho' if the Priſon be on Fire by Accident, if any Priſoner therein, for ſaving himſelf, break the Priſon, this is no Felony, but it is an Act excuſable by the Law of Nature. *Plowd. fol.* 13. *b.*

If a Stranger break the Priſon, or make a Reſcue, whereby a Priſoner for Felony makes his Eſcape, this is Felony both in the Priſoner and Stranger. 1 H. 7, 6. 1 *Ed.* 3. 17. *Dyer* 99. So it is of reſcuing one going to Execution.

If a Juſtice of Peace deliver a Priſoner for Felony without Bail, this is Felony; but if he bail one who is not bailable, this is only a negligent Eſcape. *Ibid.* 97.

Multiplication of Gold or Silver, or to practiſe that Art, is Felony. 5 H. 4. 4. *Dyer* 18. *Plowd.* 105. This Act is repealed by 1 *W.* & *M. c.* 30.

If a Man ſteal Goods, and then another ſtealeth them from him, the Owner may charge either of them with the Felony. 13 *Ed.* 4. 4 H. 7.

If a Man deliver Cloth to a Taylor, to make a Garment, and it be ſtolen from him, the Offender may be charged for the ſame, either at the Owner's or Taylor's Suit. *Cro.* 70.

If a Felon break from thoſe who are leading him to Gaol, if they cannot otherwiſe take him, he may be killed; for their Authority excuſes them. See *Co. Pl. Cr.* 221.

Husband killing a Man in the Act of Adultery with his Wife.

If a Husband kill a Man in the Act of Adultery with his Wife, he is only guilty of Manſlaughter, the Provocation being exceeding great, and without Malice prepenſe. *Mich.* 23 *Car.* 2. 1 *Vent.* 158.

In Petty Larceny the Offender ſhall be puniſhed at the Diſcretion of the Juſtices, and ſhall forfeit his Goods, but not ſuffer Death.

If a Servant imbezils his Maſter's Goods, he having neither general nor ſpecial Property in them, it is Felony. *Mich.* 29 & 30 *Eliz. Owen's Rep.* 52. *Bliſs* verſus *Holman. Moor's Rep.* 248. *Pl.* 392. *S. P.*

A Man may be indicted for ſtealing Goods out of a Chapel, calling them in the Indictment *Bona Capella*, out of a Pariſh Church *Bona Parochianorum.* Mich. 7 Ed. 4.

Goods waved forfeited.

If a Man be purſued as a Felon, and he flies, and waves his own Goods, they are forfeited as much as if they had been ſtolen. 57 *H.* 8. Br. New Caſes, *fol.* 69. *a. Pl.* 305.

A Man

A Man is arraigned of Felony, and acquitted, but it is found that he fled for the Felony, he ſhall not loſe his Goods which he had at the Time of his Flying, but at the Time of his Acquittal. 3 *Ed.* 3. *Goldsb. Rep.* 135. *Pl.* 35.

By the Law at this Day under the Word (Felony) in Commiſſions is included Petit Treaſon, Murder, Homicide, Burning of Houſes, Burglary, Robbery, Rape, *&c.* Chance-Medley, *Se Defendendo*, and Petit Larceny. 1 *Co. Inſt. fol.* 391. *Mar. Rep.* 214.

It was held, that where Entrance into the Houſe is gained by Fraud, with an Intent to rob and to break open Doors in the Night-time, was Burglary within the Reaſon of *Far*'s Caſe at the Seſſions at the *Old-Baily*, *Oct.* 10. 1666. 18 *Car.* 2. *Kelynge's Rep.* 62, 63. *Thomas Caſſy* and *John Cotter*'s Caſe.

A. B. was indicted for breaking open a Chamber in *Somerſet-houſe*, and the Indictment laid it to be *Dom' Manſional'* of the Perſon who lodged in it; it was agreed by Chief Juſtice *Bridgman* and *Kelynge*, that the Indictment was not good, becauſe all *Somerſet-houſe* is one intire Houſe; ſo for *Whitehall*, and differs from the Caſe of the Inns of Court, where every Gentleman hath a ſeveral Intereſt, and therefore there every ſeveral Chamber is *Dom' Manſional'* of the Perſon who hath the Intereſt, 14 *Oct.* 14 *Car.* 2. at *Newgate* Seſſions. *Kelynge's Rep.* 27. *Henry Burgeſs*'s Caſe.

Caſe of E. P. who procured his Friend to eſcape.

E. P. was indicted for Murder, and while he was in the Place where the Priſoners uſe to ſtand at the Gaol-Delivery, *J. C.* being in very good Cloaths, went in thither, under Colour to ſee him, and watching the Time when the Keepers were buſy, he open'd the little Door and went out, and *E. P.* followed him, and the Keeper of the outward Door, not knowing them, open'd that to them, and they both went together out of the Yard; but they were preſently followed and taken by the Keepers, and *J. C.* was indicted for Felony; and upon the Evidence it was ſworn, that after they were taken *J. C.* ſaid he had done nothing but what he ought to do, to help away his Friend, who was in Danger of his Life; and on this Evidence he was found guilty of the Felony, 3 *April* 1665. 17 *Car.* 2. at the *Old Baily*, before Chief Juſtice *Hyde*, Judge *Kelynge*, and Recorder *Wylde*. *Kelynge's Rep.* 45.

Where a Servant receives his Maſter's Money, due on an Obligation.

If a Servant receives Money upon an Obligation, or upon Sale of Wares, and goes away with the Money, not Felony within the Statute 21 *H.* 8. *cap.* 7. becauſe

becauſe he had not the Money by the Delivery of his Maſter: But if he had the Money by the Delivery of his Maſter, or of another Servant of his Maſter's, and goes away with it, ſo as it be to the Value of 40 *s.* this is Felony; but not if he goes away with a Bond. Reſolved *Mich.* 25 *H.* *Dyer's Rep.* 5. *Pl.* 4.

On Stat. 21 *H.* 8. *c.* 7. it was held, Firſt, that it extends only to ſuch as were Servants both at the Time of the Delivery and ſtealing of the Goods; 2dly, It does extend only to Goods delivered as to be kept, and not caſual Recepits. *Black.* 128.

What makes Felony on 1 H. 7. cap. 7.

K. was indicted upon 1 *H.* 7. *cap.* 7. for hunting in one of the King's Parks by Night: The Indictment was 1ſt, For hunting and killing a Deer at Eleven a-Clock at Night. 2dly, For that he being examined before a Juſtice of Peace denied it. *Montague*, Chief Juſtice, ſaid, That there are four Things requiſite upon this Statute to make it Felony. 1. Information muſt be given of this Offence to a Juſtice of Peace. 2. He muſt make out his Warrant. 3. He muſt examine concerning the Offence. 4. The Offender muſt deny it. *Mich.* 17 *Jac.* 1. 2 *Roll's Rep.* 133. *Manklen's* Caſe.

Tho' the Offence of Hunting in a Park be made Felony, yet it may be made but a Treſpaſs if the Party pleaſeth. *Mich.* 33 *H.* 8. *Dyer, fol.* 50. *a Co.* 3. *Inſt.* 78.

Caſe of E. and F. who robbed a Chamber in the Temple.

E. and *F.* were indicted, for that they in the Day-time broke open *Domum Manſionalem* of *H. A.* in the *Temple*, no Perſon being therein, and ſtole 40 *l.* *E.* went up a Ladder, enter'd the Chamber of *H. A.* and took away the Money, and *F.* held the Ladder, and ſaw *E.* get into the Chamber, and was aſſiſting and helping him, and took Part of the Money; adjudged Felony without Clergy in *E.* within Statute 39 *Eliz. cap.* 15. but not in *F.* and that Chambers in the Inns of Court and Chancery are Dwelling-houſes within the Act of Parliament. *Trin.* 13 *Car.* 1. *Cro. Car. Evans* and *Finch's* Caſe. *Jones* 394.

There muſt be Marriage or carnal Copulation, to make it Felony within 3 H. 7. c. 2.

It is not Felony within the Intent of Statute 3 *H.* 7. *c.* 2. made againſt ſtealing Maid, Wife, or Widow, to take them away, unleſs Marriage or carnal Copulation follows. Reſolved 36 *Eliz.* 12 *Co. Lit.* 20, 21. 1 *And. Rep.* 115. *Pl.* 160. *Trin.* 25 *Jac.* 1. *Hutton's Rep.* 2. *Paſch.* 25 *Eliz.* *Savil's Rep.* 59. *Pl.* 127. Agreed by all the Judges.

But a Marriage de facto ſufficient.

Where the Taking of a Woman is againſt her Will, altho' ſhe afterwards conſents to be married, yet it is Felony; and though it be not a Marriage *de jure*, becauſe

becauſe the Woman is in Fear, and knows not what ſhe does; yet it is a Marriage *de facto*, and Felony within the Statute. So Reſolved *Mich. B. R.* 13 *Car.* 1. *Cro. Car.* 482, 485, 488, 492. *Fulwood*'s Caſe. *Hob.* 182.

Woman muſt have Subſtance in Goods or Lands, or be Heir apparent.

J. B. having but one Son and one Daughter, and being worth above 5000 *l. E. M.* cauſed her to be allured from her Father's Houſe in *Southwark* down the *Thames*, to ſee a Ship; and having her ſo Aboard, afterwards by Force and Threats carried her into *Suffolk*, and there married her; this was adjudg'd no Felony, becauſe her Father had a Son; and to make it Felony the Woman muſt be Maid, Widow, or Wife, that has Subſtance in Goods or Lands, or is Heir Apparent. So Reſolved *Hob. Rep.* 182. *Burton* verſus *Morris*.

Felony to forge any Letter of Attorney to transfer Stock, or to receive Dividends, &c.

If any Perſon forge, or counterfeit, or procure to be forged or counterfeited, or knowingly and wilfully act or aſſiſt in the Forging or Counterfeiting any Letter of Attorney, or other Authority or Inſtrument, to tranſfer, aſſign, ſell, or convey any Share in any capital Stock and Fund of any Body publick or corporate, eſtabliſhed by Act of Parliament; or to receive any Annuity or Dividend, or ſhall demand or endeavour to obtain any Share in Stock tranferred, or Annuities, or Dividends to be received by Virtue of ſuch forged Letter of Attorney, *&c.* or ſhall perſonate any real Proprietors, and thereby transfer, or endeavour to transfer the Stock, or to receive the Money for the ſame, every ſuch Perſon being thereof convicted, ſhall ſuffer Death as a Felon. 8 *Geo.* 1. *c.* 22.

Miſpriſion of Felony.

If one conceal a Felony, 'tis Miſpriſion of Felony, for which a Man is fineable; for every Man is bound as much as he may, to prevent and hinder ſuch Evils, and therefore if one ſtand by, and look on whilſt a Man is ſlain, and do not his beſt to prevent it, or after he is wounded, to ſeize the Murderer, he may be indicted, and fined for it. And ſo if he ſeize him, and after let him Eſcape.

An Information againſt a Felon.

The Information of *A. B.* of, *&c.* taken on Oath this Day of, *&c.* before, *&c.*

Eſſex, ſſ. THis *Informant ſaith, that on*, &c. *laſt paſt, about*, &c. *at Night as he was going with a Parcel of Goods*, viz. &c. *from his Houſe ſituate*, &c.

&c. to, &c. C. D. of, &c. did in a violent Manner ſeize him the ſaid A. B. *and by Force take away from him the Goods aforeſaid, and when he had ſo ſtolen the ſaid Goods, made his Eſcape with the ſame.*

A Warrant to ſearch for a Felon, and to raiſe Hue and Cry, *&c.*

Oxon. ſſ. *WHereas* A. B. *of, &c. hath this Day complained unto me* B. C. *Eſq; one of His Majeſty's Juſtices of Peace for the County aforeſaid, that upon* Friday *the ſecond Day of* February *laſt, at Night he was robbed of, &c. and other Things, and that he hath great cauſe to ſuſpect* J. N. *an idle Perſon, (here deſcribe his Perſon, Cloaths, and Age:) Theſe are therefore to require you, and each of you to ſearch diligently within your Precincts for the ſaid* J. N. *and likewiſe to make Hue and Cry after him, from Town to Town, and from one County to another, as well by Horſemen, as Footmen, and if you ſhall find the ſaid* J. N. *that then you apprehend him, and carry him before ſome Juſtice of the Peace for the County. And hereof fail not.* Given, *&c.*

A Warrant to ſearch for ſtolen Goods.

2 & 3 P. & M. Eſſex, ſſ. *WHereas I am informed by* A. B. *of, &c. that, &c. was lately ſtolen and carried away off from the Lands of the ſaid* A. B. *in, &c. contrary to the Statute in that Caſe made and provided: Theſe are therefore in His Majeſty's Name to require you to enter into, and ſearch the Houſes, Out-houſes, or any other Places of ſuch Perſons whom you ſhall juſtly ſuſpect to have taken the ſame: And if you find any ſuch, &c. that then you apprehend the Perſon or Perſons ſuſpected for taking it, and thoſe in whoſe Houſes, Out houſes, or other Places wherein it ſhall be found, and bring them before me, or ſome other of His Majeſty's Juſtices of the Peace for the County aforeſaid, that they may be proceeded againſt according to Law.* Given, *&c.*

A Warrant to apprehend a Felon.

One Juſtice. 1 R. 3. c. 3. 21 Ja. 1. c. 26. 2 Rolls 226, 246. Eſſex, ſſ. *WHereas* T. P. *of, &c. hath this preſent Day made Oath before me* R. B. *Eſq; one of His Majeſty's Juſtices of the Peace for the ſaid County, and thereby charged* J. O. *of, &c. with the felonious taking,*

taking, &c. *These are therefore to command you to apprehend the said* J. O. *and to bring him before me, or some other of His Majesty's Justices of the Peace for this County, to be examined concerning the Premisses with which he is charged; and hereof fail not.* Given, &c.

A Commitment of a Felon.

WHereas T. C. *of*, &c. *has this Day been convicted before me by the Oath of*, &c. *of a Felony lately committed in the Parish of*, &c. *wherein the said* T. C. *stole several Parcels of Goods*, (viz.) &c. *from*, &c. *and the said* T. C. *on his Examination saying nothing material to clear himself from the said Felony*: These are therefore to command you to convey the said* T. C. *to the Common Gaol of*, &c. *aforesaid, and to deliver him to the Keeper thereof; hereby requiring you the said Keeper to receive the Body of the said* T. C. *into your Gaol, and that you do safely keep him in your said Gaol and Custody until he shall be discharged from thence by due Course of Law, and hereof fail not at your Perils.* Given, &c. 2 & 3 P. & M.

* Or having confessed it as the Case is, or being charged.

Warrant to apprehend one for stealing a Promissory Note.

Essex, ss. WHereas A. B. *of* C. *in the County of* Essex, *Butcher, was this Day charged before me, on the Oath of* C. D. *of* &c. *Gent. with feloniously taking from him one Promissory Note, for the Payment of twelve Pounds to him the said* C. D. *by* E. F. *Esq; or Order* (one Exchequer Note, Bank Bill, or Bond, &c.) *These are therefore in His Majesty's Name to require and authorize you, and either of you, to apprehend the said* A. B. *and to bring him before me, or some other of His Majesty's Justices of the Peace, to be examined concerning the Premisses, and to be further dealt with according to Law.* Given under my Hand and Seal, &c. 2 G. 2.

Mittimus for forging a Bond.

Essex, ss. WHereas A. B. *of* C. *in the County of* Essex, *Yeoman, was this Day brought before me, and charged by the Oath of* C. D. *of* C. *aforesaid, Esq; with forging a Bond of* 100l. *for the Payment of* 50l. *to him the said* A. B. *by* E. F. *of* L. *in the said County, Gent.* (Deed, Will, Writing Obligatory, Bill of Exchange, Promissory 2 G. 2.

Promiſſory Note, &c.) contrary to the Statutes in that Caſe made and provided: Theſe are therefore in His Majeſty's Name to require and authorize you to take the ſaid A. B. *and to convey him to the Gaol of the County aforeſaid: And you the ſaid Keeper are hereby required to receive the ſaid* A. B. *and him ſafely to keep in your Cuſtody until he ſhall be diſcharged by due Courſe of Law.* Given under my Hand and Seal, *&c.*

A Condition of a Recognizance to appear, and give Evidence againſt a Felon.

Eſſex, ſſ. THE *Condition of this Recognizance is ſuch, That if the ſaid* J. H. *ſhall Perſonally appear at the next General Quarter* * *Seſſions of the Peace to be held at* M. *for the Eaſt Part of the ſaid County of* Eſſex, *and then and there give ſuch Evidence as he knows, againſt,* &c. *of, and concerning his feloniouſly ſtealing two Silver Spoons, the Goods of* R. B. *and do not depart thence without Leave of the Court, that then,* &c.

* Or at the next Aſſizes.

If there be no direct Charge againſt the Perſon, but only Suſpicion, then you bind the Perſon in a Recognizance with a Condition to appear at the Aſſizes or Seſſions, as followeth.

The Condition for a ſuſpected Perſon to Appear, *&c.*

THE *Condition of this Recognizance is ſuch, That if the above-bounden* T. P. *ſhall perſonally appear,* &c. *and do then, and there anſwer all ſuch Matters and Things which ſhall be objected againſt him, being ſuſpected to have feloniouſly taken the Goods of,* &c. *and do not depart without Leave of the Court, that then this Recognizance to be void,* &c.

Indictment for Buggery.

Middleſex, ſſ. JURB', &c. quod H. S. nuper de London Ar' Deum pre oculis ſuis non habens nec nature ordinem reſpiciens ſed inſtigatione diabolica motus & ſeductus duodecimo die Maij, &c. apud Paroch' Sci' Andree in High Holborn, in Com' Midd' pred', viz. in domo manſionali cujusdam M. ibidem vi & armis in quendam

dam R. B. puerum maſculum circa etatem ſexdecim annorum inſultum fecit & cum eodem R. B. adtunc & ibidem nequiter diabolice ac contra nature ordinem rem veneream habuit ipſumq' R. adtunc & ibidem carnaliter cognovit peccatumq' illud Sodomiticum deteſtabile & abominandum Anglice vocat' Buggery, (inter Chriſtianos non nominand') adtunc & ibidem cum eodem R. B. nequiter diabolice felonice ac contra naturam commiſit & perpetrabit in magni Dei omnipotentis diſplicentiam ac totius generis humani dedecus ac contra pacem dicti Dom' Regis coronam & dignitatem ſuas & contra formam Statuti in hujuſmodi caſu edit' & provis. &c.

An Indictment for ſeizing the Goods of a Felon before Conviction.

Eſſex, ſſ. JUR', &c. quod cum quidam J. O. nuper de H. in Com' S. Labourer, capt' & arreſtat' fuit pro ſuſpicione Felonie per ipſum perpetrat' viz. pro eo quod ipſe J. O. Felonice cepit & effugavit equum de bonis & catallis cujuſdam T. P. & pred' J. O. adtunc & ibidem ductus fuit coram H. P. Ar' un' Juſticiar' Dom' Reg' ad pacem in Com' pred' conſervand' aſſign' & per preceptum ejuſdem Juſticiar' debito modo commiſſus fuit Gaole Com' pred' & quedam Perſone, viz. J. S. de, &c. & T. R. de, &c. adtunc & ibidem 5 vaccas duos equos, &c. ſubducebant de bonis & catallis pred' J. O. ſic Arreſtat' pro Felonia pred' antequam de Felonia pred' convictus fuit contra formam Statut' in hujuſmodi caſu edit' & provis' & contra pacem, &c.

By the Statute of 1 R. 3. c. 3. If Goods of a ſuſpected Perſon be ſeized on before Conviction, the Seizor forfeits to the Party grieved double the Value to be recovered by Action of Debt. 1 Rep. 171. See 1 Lut. 132. a Declaration on this Statute. Raym. 414.

A Commitment for Felony relating to the Stocks.

WHereas *it has been duly proved before me by the Oath of*, &c. *that* A. B. *of*, &c. *hath been guilty of perſonating* C. D. *Proprietor of* 100 l. South-Sea *Stock, and of endeavouring to transfer the ſaid Stock, and to receive the Money for the ſame, which by a late Act of Parliament is made Felony without Benefit of Clergy: Theſe are therefore to command you to convey the ſaid* A. B. *to the common Gaol of*, &c. *and deliver him to the Keeper thereof; Hereby alſo requiring you the ſaid Keeper to receive the ſaid* A. B. *into your Gaol, and him there ſafely to keep until he ſhall be diſcharged by due Courſe of Law.* Given, &c.

8 Geo. c. 22.

This Statute of 1 *Rich.* 3. *c.* 3. above mentioned, is but in Affirmance of the Common Law, for there is a Writ to Deliver the Goods upon Security given, and 'tis grounded upon this Reaſon; That the Felon may have ſomething to ſupport himſelf in Priſon: But the Statute doth not extend to a Perſon at large; for in ſuch Caſe the Officer may ſeize them by the Statute of 25 *Ed.* 3. *c.* 14. *Raym.* 414.

Godb. 206. So that at Common Law, ſuch Goods are not forfeited till Conviction, and till then the Party ought to have the Benefit of them to maintain himſelf; 'tis true, they may be put *in ſalva Cuſtodia*, but cannot be ſeized for the Uſe of the King, till the Party is convicted.

If the Felon doth not fly, but is apprehended with the Goods, the Owner ſhall have them; if he flies and freſh Purſuit is made, and he waves the Goods, and they are taken up and carried away before the Owner comes, the Property is altered by the Seizure, and veſted in the Lord: But if the Purſuit was always in View of the Felon, 'tis otherwiſe. *Het.* 65.

A Liberate to Deliver a Priſoner committed for Felony.

W. P. and *E. P.* Eſqrs; two of the Juſtices, &c. to the Keeper of His Majeſty's Gaol, &c. Greeting.

Two Juſtices, 3 E. 1. c. 9. Cromp. 238. Lambert. 348. *Foraſmuch as* A. B. *Labourer, hath before us found ſufficient Mainpriſe to appear before the Juſtices of Gaol Delivery, at the next general Gaol-delivery to be holden in the ſaid County, there to anſwer to ſuch Things as ſhall be then on the behalf of our Sovereign Lord the King, objected againſt him, and namely to the felonious Taking of two Sheep, (for the Suſpicion whereof, he was taken and committed to your ſaid Gaol) we command you, on the behalf of our ſaid Sovereign Lord the King, That, if the ſaid* A. B. *do remain in the ſaid Gaol for the ſaid Cauſe, and none other, then you forbear to grieve, or to detain him any longer, but that you deliver him thence, and ſuffer him to go at large, and upon the Pain which will fall therein.* Given, &c.

An Information was brought againſt an Attorney, and another for conſpiring to take away a Man's Life, by accuſing him of Felony: He was acquitted of the Accuſation on an Indictment preferred, and the Conſpiracy

ſpiracy being proved againſt the others, they were both ſentenced to ſtand in the Pillory, loſe their Ears, be whipped, and each fined 500 *l.* This Sentence was executed on them. 11 *Ja.* 1. *Miller*'s Caſe.

If a Man be arreſted for Felony, his Goods ſhall not be ſeized until Attainder or Conviction, upon Pain to forfeit the double Value to the Party grieved; for the Party grieved may ſell them *bona fide* for his Maintenance in Priſon before Conviction. 1 *R.* 3. *c.* 3. *Stanf.* 192. 8 *Co.* 171. *b.*

No Felon's Goods to be ſeized till Attainder.

After Conviction the Town preſently ſtands charged for the Felon's Goods, (if then in his Poſſeſſion) and ſhall anſwer the Impairing of them, except they ſhew who detained them, and that they could not have Poſſeſſion of them. *Fitz. Cor.* 3. 66. *Stamf.* 193, 194. 31 *Ed.* 3. 35.

And then the Town preſently ſtands charged for them.

If a Feme covert ſteal Goods by the Compulſion of her Husband, 'tis not Felony in her, becauſe of the Neceſſity of Obedience; but if it was at his Perſuaſion, and he not preſent, or without any Conſtraint from him, ſhe is then guilty of Felony, and her Husband is Acceſſary.

But this Privilege doth not prevail in Caſes of Treaſon and Murder, becauſe of the Greatneſs of thoſe Offences.

Feme covert excuſed in Theft, but not in Treaſon and Murder.

Of Pleas to Indictments for Felony.

There are three Sorts of Pleas to Indictments for Felony.
1. Demurrer.
2. In Abatement or Bar.
3. The general Iſſue.

If the Defendant demur, he ought to be very certain, that the Indictment is faulty; for if it be adjudged good, he ſhall have Judgment and Execution, becauſe by the Demurrer the Fact is confeſſed as laid in the Indictment.

2. In Abatement.
1. *Miſnomer* in the Surname.
2. *Miſnomer* in the Chriſtian Name.

In the Surname 'tis a good Plea in Abatement unto an Appeal, but not to an Indictment, but in the Chriſtian Name 'tis a good Plea to an Indictment, but then the Party muſt confeſs his true Name, that he may be inſtantly indicted.

In Bar.
Auterfoits acquit.
Auterfoits convict.

1. *Auterfoits* acquit muſt always be of the ſame Felony, and therefore 'tis no good Plea to an Indictment, or Appeal for another Felony.

2. It muſt be always intended of a lawful Acquittal; for if the Indictment or Appeal is inſufficient and faulty, and the Defendant is acquitted thereon, he may be indicted again for the ſame Felony, unleſs Judgment is given upon ſuch Indictment or Appeal for another Felony.

3. An Acquittal on an Indictment is no Plea to an Appeal brought for the ſame Death, but an Acquittal upon an Indictment, or an Appeal in Caſes of Felony is a good Plea to any other Indictment for the ſame Felony.

But then the Appeal muſt not be erroneous in Subſtance, nor be brought by a wrong Perſon.

For Judgment in Felony, &c. See Treaſon.

Auterfoits Convict. { Of Manſlaughter either upon an Indictment, or an Appeal, is a good Plea to any other Indictment for the ſame Crime.

Feme Covert.

Feme Covert bound to keep the Peace.

THE Peace may be granted againſt her, or againſt an Infant, tho' under 14 Years old, but then ſhe muſt not be bound, tho' with her Husband, for the Recognizance will be void as to her; but ſhe muſt find Sureties, which if ſhe cannot do, ſhe muſt be committed.

For Riot or Treſpaſs, ſhe may be fined.

If ſhe commit a Riot or Treſpaſs without her Huſband, ſhe may be indicted and fined; but the Fine ſhall not be levied on her Husband, but on her after his Death, and ſhe ſhall be committed, till 'tis paid. 9 *Rep.* 72. Dr. *Huſſey's* Caſe. 11 *Rep.* Dr. *Forſter's* Caſe.

Where Baron and Feme ſteal together.

If both ſteal together, it hath been held that this ſhall be taken to be the Act of the Husband alone, and that ſhe cannot be ſo much as Acceſſary to it, becauſe of her Obedience as aforeſaid; tho' others are of Opinion, that Obedience ſhould only extenuate the Crime, for ſuch it is, and if ſhe do conſent, ſhe may be indicted.

She cannot ſteal her Husband's Goods; but if ſhe be taken away with them againſt his Conſent, 'tis Felony in him who takes her; ſo 'tis if ſhe deliver her Husband's Goods to an Adulterer, this is Felony in him. She cannot ſteal her Husband's Goods.

In an Indictment for ſelling Ale without Licence, the Husband muſt be joined, becauſe he is to pay the Fine.

Feaſant. See Game.
Ferrets. See Game.

Fine.

WHERE a Fine is ſet by any Statute, in ſuch Caſe, if the Offender confeſs the Indictment, or is found guilty, the Court cannot mitigate the Fine; but if he ſubmit with a Proteſtation of his Innocence, and throw himſelf upon the Favour of the Court, *quia noluit placitare cum Dom. Rege*, they may then ſet a leſs Fine than enjoined by the Statute, *&c.* Where a Fine may be mitigated, and where not.

Fire.

TO burn the Houſe of another voluntarily and maliciouſly, is Felony at Common Law, whether it be done by Night, or by Day; and it is not neceſſary that the whole Houſe be burnt; for if it be ſet on Fire, and but one Part of it is burnt, yet it is Felony. But a Man may burn a Houſe whereof he is in Poſſeſſion by Leaſe, and it is no Felony: But if a Man voluntarily fire his own Houſe held by Leaſe, which burns his Neighbour's Houſe, this is Felony, though in his own Houſe, by reaſon it was done maliciouſly to injure his Neighbour; and the Event ſhall be coupled to the Cauſe. *Cr. Car.* 376. *Jones* 351. To burn another's Houſe is Felony.

Church-wardens of every Pariſh within the Weekly Bills of Mortality, are to make, place, fix, and continue Stop-blocks or Fire-cocks on Mains and Pipes; and to have and to keep in Repair a large Engine, Hand Engine and Leather Pipe and Socket, or they forfeit 10 *l.* one Half to the Poor, and the other to the Informer. to be levied by Warrant of two Juſtices. 6 *Ann. c.* 31. 7 *Ann. c.* 17. Church-wardens to keep Fire-cocks and Engins, and the Rewards they are to have on coming to Fires.

The Turn-cock, whoſe Water ſhall firſt come into the main Pipe when the Plug ſhall be opened at any Fire, ſhall be paid 10 *s.* the firſt Pariſh Engine in good Order to have 30 *s.* the ſecond 20 *s.* and the third 10 *s.* payable by the Church-wardens, who may aſſeſs the Money as they do for the Poor.

If a Servant fire a Houſe through Careleſneſs, they forfeit 100 l.

If any Servant fire any Dwelling-Houſe, or Out-houſe through Negligence or Careleſneſs, they ſhall forfeit 100 *l.* to be levied by Warrant from two Juſtices, and paid to the Church-wardens to be diſtributed to the Sufferers by the Fire: And in Caſe of Default or Refuſal, they are to be ſent to the Houſe of Correction, there to be kept at hard Labour for 18 Months. 6 *Ann. c.* 31.

'Tis Felony to ſet on Fire a Stack of Corn in *Northumberland*, *Cumberland*, *Weſtmoreland*, or *Durham*, 22 & 23 *Car.* 2. *c.* 7.

No Action can be brought againſt the Perſon, in whoſe Houſe the Fire began.

By Stat. 6 *Ann. c.* 31. for the Space of 3 Years next enſuing, and from thence to the next Seſſions of Parliament, no Action ſhall be brought againſt any Perſon in whoſe Houſe any Fire began, nor any Recompence be made by ſuch Perſon for any Damage ſuffered; and if ſuch Action be brought, the Defendant may plead the General Iſſue, and give that Act in Evidence, and if he recover, ſhall have treble Coſts. 6 *Ann. c.* 31.

By Stat. 10 *Ann. c.* 14. The aboveſaid Act which was only for three Years, is made perpetual; but nothing therein to make void any Contract or Agreement between Landlord and Tenant.

A. maliciouſly intending to burn only the Houſe of *S.* thereby burnt the Houſe of *L.* this is Felony, and he may be indicted, that *ex malitia præcogitata* he burnt the Houſe of *L.* *H. P. C.* 85 *Co.* 11. *Rep. fol.* 29. *A. Ad. Prullum's* Caſe.

Rewards not to be paid without the Direction of Alderman of the Ward.

By Stat. 7 *Ann. c.* 17. The Rewards to the Turn-cock and others, ſhall not be paid without the Approbation and Direction of the Alderman of the Ward where the Fire happened, or of his Deputy, or two Common Council-men of the ſame Ward; the ſeveral Rewards ſhall be likewiſe paid to the Keeper of any other great Engine, who ſhall bring it in to help to extinguiſh the Fire, in good Order, and compleat, tho' it is not a Pariſh Engine.

Veſtry to make Aſſeſſments.

If the Veſtries ſhall think it neceſſary to have more than one great Engine, or Hand Engine, they may provide it at the Pariſh Charge, by an Aſſeſſment to be

be made, as by the former Act, and to be under the ſame Regulations.

The Veſtries may rate and aſſeſs ſuch Sums of Money as are neceſſary to defray the Charge of providing and maintaining the Engines, Stop-blocks, and Fire-cocks, and other Implements and Materials; and for Payment of the ſaid Rewards; which Rates being confirmed as the Poor Rates, may be levied in like Manner. *See* the Act at large.

A Warrant againſt Church-wardens for not fixing Stop-blocks.

London, ſſ. *Whereas* A. B. *and* C. D. *Church-wardens of the Pariſh of*, &c. *have been duly convicted before us of a Default in not placing and fixing of Stop-blocks of Wood with a Plug on the main Pipe belonging to the Water-works in the ſaid Pariſh of*, &c. *as the Act of Parliament directs (or in not keeping in Repair a large Engine for the Extinguiſhing and Prevention of Fire*, &c.) *whereby they have incurred a Forfeiture of* 10l. *Theſe are therefore to require you to levy the ſaid Sum of* 10l. *by Diſtreſs and Sale of the Goods of the ſaid Church-wardens; and that you pay one Moiety thereof to*, &c. *who informed us of the ſaid Offence; and the other Moiety to the Overſeers of the ſaid Pariſh of*, &c. *for the Uſe of the Poor there.* Given, &c. 6 Ann. c. 31.

A Warrant for an Engine Keeper to recover 30s.

London, ſſ. *Whereas due Proof hath been made on the Day of the Date hereof before us* G. D. *and* F. K. *two of His Majeſty's Juſtices of the Peace in and for the ſaid City of* London, *That* C. R. *Engine-Keeper, did firſt bring in a Pariſh Engine to help to extinguiſh a Fire, which lately happened in the ſaid Pariſh, which Engine was then in good Order, and compleat with a Socket, Hoſe, and leather Pipe, by Reaſon whereof the Church-wardens of the ſaid Pariſh ought to have paid unto the ſaid* C. R. *the Sum of* 30s. *purſuant to the Statute in that Caſe made and provided, but have hitherto made Default in Payment thereof: Theſe are therefore to require you to levy the ſaid Sum of* 30s. *by Diſtreſs and Sale of the Goods of the ſaid Church-wardens; and that you pay the ſaid Sum to the ſaid* C. R. *and hereof fail not.* Given, &c.

A Warrant to levy the Forfeiture on a Servant's firing a Houſe, or on Default of Payment to ſend him to the Houſe of Correction.

6 Ann. c. 31.

WHereas A. B. *of*, &c. *hath this Day made Oath before us* C. D. *and* F. G. *Eſq; two of his Majeſty's Juſtices of the Peace for the County aforeſaid, that the Dwelling-houſe of him the ſaid* A. B. *ſituate in*, &c. *aforeſaid, was on*, &c. *laſt paſt ſet on Fire, and burnt down by the Careleſneſs and Negligence of* C. D. *his Servant, and the ſaid Crime hath been duly proved before us, by the Depoſitions of the ſaid* A. B. *and of*, &c. *and the ſaid* C. D. *on his Examination not being able to clear himſelf from the Charge aforeſaid; but it appeareth plainly againſt him: Theſe are therefore in His Majeſty's Name to command you to levy the Sum of* 100 l. *on the Goods and Chattels of the ſaid* C. D. *by Diſtreſs and Sale thereof, being forfeited by committing the Crime aforeſaid; and that you do pay and diſtribute the ſaid Sum of* 100 l. *when levied to and amongſt the Sufferers by the ſaid Fire, according to the Direction of the Act of Parliament in that Behalf made; and if there ſhall be no Diſtreſs, and the ſaid* C. D. *neglect or refuſe to pay the ſame, that then you do convey him the ſaid* C. D. *to the Gaol aforeſaid, and deliver him to the Keeper thereof, hereby requiring you the ſaid Keeper, the ſaid* C. D. *ſafely to keep in your Cuſtody, and at hard Labour, until he ſhall be diſcharged by due Courſe of Law.* Given, &c.

Indictment for burning a Houſe.

* It need not be Manſional-em but Domum only, which comprehends a Barn, Stable, &c.
3 Inſt. 6, 7.

Eſſex, ſſ. JURA, &c. quod J. O. nuper de H. in Com' prædº Labourer ſecundo die Decembris, Anno, &c. ad * Domum Manſionalem R. B. de H. prædº in Com' prædº Gen' (eadem Domo in dicto Com' exiſten') vi & armis inter horas quintam & ſextam ante Meridiem ejusdem diei acceſſit & cum candela ignita quam dict' J. O. adtunc' & ibidem in manu ſua tenuit (or as the Caſe is) prædº domum ex malitia ſua præcogitata Felonice accendit unde eadem domus tunc & ibidem totaliter combuſta fuit & ſic prædº J. O. prædicto ſecundo die Decembris Anno ſupradicto apud H. prædº in Com' prædº Domum Manſionalem prædº modo & forma ſupradict' voluntarie & ex Malitia ſua præcogitata Felonice incendit & Combuſſit contra Pacem, &c.

Fish and Fishing.

JUSTICES of Peace have Power to redress Grievances relating to unlawful Taking and Destroying Fish.

Fish taken of unlawful Sizes, or unlawful Nets used.

If any Person shall take Salmons or Trouts out of Season, or Pikes shorter than ten Inches, Salmon than sixteen, Trout than eight, and Barbles than twelve Inches; or shall use any Engine to take Fish, other than Angle or Net, or a Tramel of two Inches and a Half Mesh, or shall use any Net or Engine to destray the Spawn or Fry of Fish, he shall forfeit 20 *s.* for each Fish, and also the Net or Engine. *Stat.* 13 *Edw.* 1. *c.* 7. 1 *Eliz. c.* 7.

By Stat. 4 & 5 *Ann. c.* 21. the Statute 13 *Edw.* 1. is continued in full Force.

Erecting Wears to destroy the Spawn of Fish.

If any Person shall erect a Wear along the Seashore, or in any Haven or Creek, or within five Miles of the Mouth of any Haven or Creek, and shall willingly destroy the Spawn or Fry of Fish, he shall forfeit 10 *l.* to be levied by Distress, *&c. Stat.* 3 *Jac.* 1. *cap.* 12.

Mesh of Nets used near the Sea to be three Inches and a Half wide.

And if any Person shall fish in any Haven or Creek, or within five Miles of any such, with any Net of a less Mesh than three Inches and a Half between Knot and Knot, or with a Canvas Net, or other Engine, whereby the Spawn or Fry of Fish may be destroyed, he shall forfeit 10 *s.* and the Net or Engine. *ibidem.*

Fishing in, or breaking down Fish-ponds.

If any Person shall unlawfully break down Fish-ponds, or Fish in them without Licence from the Owner, he shall suffer three Months Imprisonment, and give good Security for his good Behaviour for seven Years, and the Party grieved may recover treble Damages: But on the Offender's acknowledging his Offence in the Sessions, and paying the Damages, the Justices have Power to release the good Behaviour. *Stat.* 5 *Eliz. cap.* 21.

Purloining or packing Pilchards without Leave of Owners.

If any besides Owners, Partners, or Adventurers in Fishing, shall pack up Pilchards in Casks to be sold or transported, (unless bought of such Owners, or with their Leave) he shall forfeit the Value to the King, and Informer: And if any shall purloin Pilchards, he shall forfeit treble the Value, or be sent to the House of Correction; and suspicious Persons flocking about Boats, Nets, or Cellars where Pilchards are,

are, being warned to be gone, and refusing, on Complaint to one Justice, shall pay 5 *s.* to the Poor, or be put in the Stocks five Hours. 13 & 14 *Car.* 2. *c.* 28. 13 & 14 *Car.* 2. *c.* 24.

Fishing without Leave in a River, or Water.

If any Person shall take or destroy Fish by any Device in any Water or River, or assist therein, without the Consent of the Owner of the River, the Offender shall make such Satisfaction to the Owner, as one Justice shall appoint, not exceeding treble Damages; and shall also pay such Sum as he shall think fit, not exceeding 10 *s.* for the Use of the Poor; and in Default of Payment to be levied by Distress and Sale; and for want of a Distress, the Offender must enter into a Bond with one or more Sureties, in the Penalty of 10 *l.* not to offend again in the like Nature, or else he must be committed for any Time not exceeding one Month. *Stat.* 22 & 23 *Car.* 2. *c.* 15.

Destroying the Spawn of Fish in Severn.

Nets for Fishing in the River *Severn*, are to have the Mesh two Inches and a Half Square from Knot to Knot, under the Penalty of 5 *l.* and destroying the Spawn of Fish between the first of *March*, and the last of *May*, incurs a Forfeiture of forty Shillings. *Stat.* 30 *Car.* 2. *c.* 9.

Nets, Engines, &c. seized, and Houses searched.

Persons keeping Nets, Angles, Leaps, Pitches, or other Engine for taking of Fish, other than Makers and Sellers of them, and Owners and Occupiers of Rivers or Fisheries; such Engines may be seized and kept by the Owners of the Rivers, and Fisheries, or such as they shall authorize. And one Justice may grant his Warrant to search the Houses of Persons not qualified, which shall be suspected to have Engines for taking Fish, and to seize and destroy the same. *Stat.* 4 & 5 *W.* & *M.* *c.* 23.

Fishmongers not to ingross Fish at Billingsgate.

Fishmongers, &c. are prohibited from buying any Quantity of Fish at *Billingsgate* Market, &c. but what shall be for their own Sale and Use, under the Penalty of 20 *l.* Stat. 10 & 11 *W.* 3. *c.* 14. for the Rates of Groundage at *Billingsgate*. *Vid.* the Act.

Lobsters must not be sold under eight Inches from the Peak of the Nose to the End of the Middle Fin of the Tail, Forfeiture of 1 *l.* for each Lobster. *ibidem.*

Two Justices residing within five Miles of the Rivers in *Hampshire*, and *Wiltshire*, &c. have Power to appoint Overseers, who being sworn, may take Offenders, &c. and destroy their Nets and Engines used contrary to the Acts relating to Fishing.

The

The Offenders for deſtroying Salmon being convicted upon Oath of one Witneſs, or Confeſſion before one Juſtice, ſhall forfeit for the firſt Offence, not under 20*s.* nor above 5*l.* for the ſecond Offence, not under 40*s.* nor above 10*l.* and as the Offence ſhall be repeated, the Penalty is to be doubled, *&c.* and diſtributed one Moiety to the Informer, and the other Moiety to the Poor of the Pariſh, where the Offence ſhall be committed; and if the Party do not pay the Penalty on Demand, then the Juſtice may ſend him to the Houſe of Correction for three Months. Penalty for deſtroying Salmon.

And if Salmon ſhall get into Ditches, *&c.* of Meadow-Ground within the Time limited by the Act, the Occupiers of ſuch Grounds ſhall permit them to paſs into the Rivers, and not deſtroy them under the Penalties, *ut ſupra.* Salmon in Ditches.

Owners and Tenants of Mills in the Counties aforeſaid, ſhall keep open a Hatch of a Foot Square in the direct Stream where there is no Wheel, ſufficient for the Salmon to paſs and repaſs from the 11th of *November*, to the 31ſt of *May*, and ſhall not uſe any Net, *&c.* in the Hatch during that Time, to take or kill Salmon under the like Penalties. Millers to keep open Hatches.

And ſuch Owners, *&c.* of Mills are not to lay Pots for the catching of Eels between the firſt of *January*, and the 10th of *March*, without ſetting Racks before them to keep out the old Salmon, and after the ſaid 10th of *March*, to the 30th of *May*, they ſhall not lay any Pot but what ſhall be wide enough to let the Fry of Salmon paſs through to the Sea, and ſhall not take or keep, or offer to Sale any of the young Fry during that Seaſon, under the Penalties above-mentioned. *Stat.* 4 & 5 *Ann. c.* 21. And not to lay Pots for deſtroying Salmon or young Fry.

The Lord Mayor and Aldermen of *London*, and the Juſtices of the Peace of the reſpective Counties for all Offences in their ſeveral Juriſdictions, in wilfully killing or expoſing to Sale any Spawn, Fry, or Brood of Fiſh, or Spats of Oyſters, or any unwholſome Fiſh, or in deſtroying any Fiſh out of Seaſon, or by expoſing ſuch Fiſh to Sale, or by wilfully buying, uſing, *&c.* any Spawn, Fry, *&c.* or catching Salmon between the 24th of *Auguſt*, and the 11th of *November* in any Year, may upon View or Complaint made, examine and determine the ſame on Oath, and upon Conviction impoſe any Fine not exceeding 10*l.* nor leſs than 5*l.* to be levied by Diſtreſs and Sale of the Goods of the Offender, unleſs the Fine be immediately paid, or good Security given to abide the Order of the Court Lord-Mayor and Aldermen, and Juſtices may hear and determine Offences about Fiſh and Fiſhing in their ſeveral Juriſdiction.

of

of Conservacy, upon the Conviction by the Lord-Mayor, &c. or the Court of Quarter-Sessions upon the Conviction by the Justices, or one of 'em, in Case the Offender shall think fit to appeal to either; and if no Distress can be had, then to be committed for any Time not exceeding two Months, to the House of Correction, without Bail; Penalty to be divided, one Moiety to the Informer, the other to the Lord-Mayor, if in his Jurisdiction; if elsewhere, then one Moiety to the Poor of the Parish where the Offence is committed, the other to the Prosecutor. *Stat.* 9 *Ann. c.* 26.

No Fish catched nor bought of Foreigners to be imported

Masters of Ships or Vessels shall not import any Herring, Cod, Pilchards, Salmon, or Ling, fresh or salted, dried or bloated, nor any Grill, Mackarel, Whiting, Haddocks, Sprats, Coal-fish, Gull-fish, Congers, or any flat Fish, or other fresh Fish, or sell the same in *England*, which shall be taken by, bought of, or received from Foreigners, on Pain of forfeiting 20*l.* to be levied by Distress of the Offender's Goods; and distributed one Moiety to the Informer, and the other to the Poor of the Parish. Conviction to be on Oath of two credible Witnesses, before one or more Justices; and in Default of Payment, or of a sufficient Distress the Offender to be committed to the common Gaol for twelve Months. 1 *Geo. c.* 16.

Penalty.

Exception of some Fish.

This Act not to extend to prevent importing Eels, Stock, Anchovies, Sturgeon, Botargo, or Cavear, Lobsters, and Turbots by Foreigners.

Size of Nets to be used on the Coast of England.

No Nets are to be used on the Sea-Coasts of *England*, for the catching any kind of Fish (except Herrings, Pilchards, Sprats, or Lavidnian) but such as the Meshes thereof are three Inches and a half from Knot to Knot, or which have any false or double Bottom, Cod or Pouch, on Pain of forfeiting 20*l.* and all such Nets.

Selling Fish under Size, forfeits 20*s.*

If any Person shall sell or exchange for other Goods, any Bret or Turbot not 16 Inches in length, Brill or Pearl not 14 Inches, Codlin not 12 Inches, Whiting not 6 Inches, Bass or Mullet not 12 Inches, Sole not 8 Inches, Plaice or Dab not 8 Inches, or Flounder not 7 Inches in Length, he shall forfeit for every Offence all the Fish to the Poor of the Parish, and the Sum of 20*s.* or in Default be sent to the House of Correction, and there whipt and kept at hard Labour for 6 Days.

Owners

Owners and Proprietors of Rivers in the Counties of *Southampton* and *Wilts*, and their Servants, and Agents by this Act, are not to kill Salmon between the first Day of *August*, and the 12th of *November*, or hurt any Salmon by Hawks, Nets, Angles, or otherwise, or expose the same to Sale, under the Penalties in 4 & 5 *Ann. c.* 21. which Statute as to the Time of catching Salmon is repealed.

Salmon in Rivers in the Counties of Southampton and Wilts.

Salmon taken in the Rivers *Severn*, *Dee*, *Wye*, *Tame*, *Were*, *Tees*, *Ribble*, *Mercy*, *Dan*, *Aire*, *Ouze*, *Swale*, *Calder*, *Wharf*, *Eure*, *Derwent* and *Trent*, are to be from the Eye to the Middle of the Tail eighteen Inches in length, and whoever shall kill or destroy them under that Size, or hinder 'em going up the Rivers to spawn, or kill them between the last Day of *July*, and the 11th of *November*, and thereof shall be convicted by Confession or Oath of one or more credible Witnesses, before one or more Justices, shall forfeit 5 *l.* for every Offence, and the Fish taken, and Nets, and Engines, to be levied by Distress; and for want of Distress, the Offender to be sent to the House of Correction, and be kept at hard Labour for three Months, and the Nets and Engines destroyed.

Salmon taken in Severn, Dee, &c. are to be eighteen Inches long.

Penalty if taken less.

Salmon sent to *London*, &c. from any of the said Rivers, shall not weigh less than six Pounds, any Person buying a Salmon of less Weight, and being thereof convicted before a Justice, *&c.* forfeits 5 *l.* and the Fish bought.

Salmon sent to London, must weigh six Pounds.

A Moiety of these Forfeitures to the Informer, the other to the Poor of the Parish, where the Offence was committed to be levied by a Warrant of a Justice, *&c.* by Distress, *&c.* before whom the Conviction was, and for want thereof to be sent to the House of Correction for three Mouths.

How the Forfeitures are to be disposed.

An Appeal lies to the Quarter-Sessions, whose Determination is to be final.

Herrings shall not be sold at Sea before Fishermen come to Land, *Stat.* 31 *Ed.* 3. *c.* 2. an Hundred of Herrings shall be an Hundred and Twenty, and a Last Ten Thousand; two Lasts of shotten Herrings fresh shall be equal in Price with one Last of full Herrings. 31 *Ed.* 3. *c.* 2.

Laws about Herring, and Salt Salmon, Fishery, &c.

All Persons may buy Herring in the Fair-time at Great *Yarmouth* openly, and not privily; and a Fisher may sell his Herring at any Time when he cometh with it. *Stat.* 35 *Ed.* 3.

Justices of Peace shall be Conservators of the Statutes relating to Fishing, and shall have Power to search

ſearch all Wears, and ſhall have Power to appoint and ſwear under Conſervators.

The Mayor of *London* ſhall have like Power in the *Thames* and *Medway*. 17 *R.* 2. *c.* 9.

None ſhall ſell or ſet to Sale any Salmon by Veſſel before it be viewed, nor unleſs the Butt contain 84 Gallons, the Barrel 42 Gallons, and the half Barrel 21 Gallons well packed, on Pain to forfeit for every Veſſel 6 *s.* 8 *d.*

None ſhall ſet any Herring to Sale in Veſſel, unleſs the Barrel contain 32 Gallons, and the half Barrel and Firkin accordingly: Nor any Eels by Veſſel, unleſs the Barrel contain 42 Gallons, and the other leſſer Meaſures accordingly.

None ſhall ſet to Sale any barrelled Fiſh unleſs it be well packed, *&c.*

Head Officers of Corporations, Burroughs, Market-Towns, and other Places, ſhall appoint diſcreet Perſons to ſearch and gauge Veſſels of Fiſh for the Prevention of Deceits. 22 *Ed.* 4. *c.* 2.

By Stat. 11 *H.* 7. *c.* 22. the Stat. of 22 *Ed.* 4. *c* 2. is confirmed, and the Gauger's, Searcher's and Packer's Fees appointed.

In Purſuance of theſe Statutes the Lord-Mayor of *London* hath from Time to Time appointed a Gauger to inſpect, that all Salt-Fiſh brought into the Port of *London*, be according to the ſaid Acts; which if well executed, would tend ſo very much to the Benefit and Reputation of the *Britiſh* Fiſhery, both at Home and Abroad: But through ſome Defects in the ſaid Acts, the ſaid Officer hath not been able to do his Duty, by which means great Quantities of unſound and unwholſome Fiſh are both frequently ſold in *London*, to the great endangering the Health of the People, and alſo exported Abroad, to the great Loſs and Reproach of the *Engliſh* Fiſhery.

If a Fiſhmonger ſell Fiſh at unreaſonable Prices, he is puniſhable for it by Indictment. *Dalt. p.* 80. *c.* 42. P. 12 *Ja.* 1.

Offences againſt 30 *Car.* 2. *c.* 9. ſhall not be puniſhed but by Information or Indictment before the Juſtices of Aſſize, and *Niſi Prius*, *Oyer* and *Terminer*, and Gaol-Delivery, or the General Seſſions of the Peace. *Stat.* 30 *Car.* 2. *c.* 9.

A War-

A Warrant to levy the Forfeiture of a Person for Fishing in a River or Pond without Leave.

Essex, ss. WHereas A. B. of, &c. *hath this Day made Oath, that* C. D. *of the Parish,* &c. *on,* &c. *last past, did angle for Fish, and catch several Trouts in the River called,* &c. *running,* &c. *now belonging to, and rented by the said* A. B. * *without his Consent, contrary to an Act of Parliament in that Case made: These are therefore in His Majesty's Name, to require you to demand of the said* C. D. *the Sum of* 7 s. 6 d. *for the Use of the said* A. B. *as a Satisfaction for the Damage he hath received, and* 5 s. *for the Use of the Poor of the said Parish of,* &c. *which I do adjudge a sufficient Forfeiture for the Offence aforesaid, according to the Power given to Justices of the Peace for the punishing of such Offenders; and if the said* C. D. *shall neglect or refuse to pay the said several Sums of* 7 s. 6 d. *and* 5 s. *for the Uses aforesaid; That then you do levy the same by Distress and Sale of the Goods of the said* C. D. *and in Case there be no such Distress, that then you do certify the same to me, that he may be further dealt with according to Law.* Given, &c.

22 & 23 Car. 2. c. 15.

* Or in the Pond of the said A. B. future, &c. as the Case is.

A Warrant to search suspicious Houses for Fishing Nets, and to seize them.

WHereas *Complaint hath been made unto me by* A. B. *of,* &c. *That several Trouts, Pike and other Fish, have been lately destroyed in the River,* &c. *running through,* &c. *belonging to the said* A. B. *as Owner of the Royalty thereof, supposed to be done by some idle and ill disposed Persons in the Parish: And that several Persons within the said Parish, do keep Nets, Leaps, Pitches, and other Instruments and Engines for the Destruction of Fish, who are not qualified by Law to do the same: These are therefore to Command you to enter into and search the Houses, Outhouses, or other suspected Places of all such Persons within your Parish, which you are informed, have any Nets, or other Instruments for Destruction of Fish, and to seize the same wherever you shall find them; and to bring the Person or Persons, in whose House or Possession they shall be found, before me, or some other of His Majesty's Justices*

4 & 5 W. & M. c. 23.

of the Peace for this County, to be dealt with according to Law. Given, &c.

A Warrant to levy the 20 l. forfeited for importing Fish taken by Foreigners.

1 Geo. c. 6.

Essex, ss. *Whereas a Complaint hath been made unto me* D. P. *Esq; one of His Majesty's Justices of the Peace of the said County, that* J. E. of, &c. *did on the* 23d *Day of* July *last past import into* D. *in the said County, and in the Realm of* England *a certain Quantity of fresh Fish taken by Foreigners and Strangers, other than Protestant Strangers dwelling in* England, * *contrary to the Statute in that Case made and provided, of which said Offence the aforesaid* J. E. *was lawfully convicted before me on the Day aforesaid, by Reason whereof he hath forfeited the Sum of* 20 l. *These are therefore to require you to levy the said Sum of* 20 l. *on the Goods and Chattels of the said* J. E. *by Distress and Sale thereof, rendering to him the Overplus, if any such shall be; and that you forthwith pay one Moiety thereof to* R. B. *of*, &c. *who first informed me of the said Offence, and the other Moiety to the Church-wardens and Overseers of the Poor of the Parish of* D. *where the same was committed, for the Use of the Poor thereof; and if no such Distress can be had, that then you certify me thereof, that such further Course may be taken therein as directed by Law.* Given, &c.

* Or Fishing on the Coasts of England with a Net with Meshes of less than three Inches and an half from Knot to Knot, to catch Fish, other than Herrings, Pilchards, Sprats, or Lavidnian, contrary to, &c. or as the Offence is, Mutatis Mutandis.

An Indictment for Fishing without the Consent of the Owner.

Essex, ss. Juri', &c. quod J. O. de, &c. in Com' prædict' Yeoman 3 die Januarii Anno, &c. vi & armis clausum cujusdam A. S. apud P. in Com' præd' fregit & in separali Piscaria sua ibidem illicite piscatus est, & Pisces inde, viz. duos Salmones & centum Tructas, &c. ad valentiam, &c. adtunc & ibidem cepit & asportavit & herbam suam ad valentiam, &c. ibidem nuper crescen' conculcavit & consumpsit & alia enormia ei intulit contra Pacem Dom' Regis nunc, &c.

Flesh.

Flesh.

Persons preaching up the Eating Fish.

PErsons preaching, or otherwise avouching or notifying, that any Eating of Fish or Forbearing of Flesh is necessary for the Saving of the Soul, or the Service of God, otherwise than as other Politick Laws be, shall be punished as Spreaders of false News at Quarter-Sessions. 5 *Eliz. c.* 5. 1 *Jac.* 1. *c.* 29.

Any, except Aged, Sick, with Child, or licensed, eating Flesh in *Lent*, or on Fish-Days, forfeits 20 *s.* and one Month's Imprisonment. 5 *Eliz. c.* 5. 27 *Eliz. c.* 11. *Lamb.* 458. 35 *Eliz. c.* 7. 1 *Jac.* 1. *c.* 29.

Bishop of the Diocese, Parson, Vicar, or Curate of the Parish, where one is sick, may grant Licence for eating of Flesh, which must be signed with the Hand of the Bishop, Parson, *&c.* and endure no longer than the Sickness. 5 *Eliz. c.* 5.

Flax. See Wool.

Force Lawful.

In what Cases Doors may be broke open.

DOORS may be broken open in the following Cases.

1. For Treason, Felony, or Suspicion thereof.

2. Where any Person, who hath wounded another very dangerously, and flieth for the same to an House.

3. A Popish Recusant Convict.

4. An Affray in the House, and the Doors shut.

5. Upon a Warrant for the Peace or good Behaviour. *Quære.*

6. Upon a *Capias Utlagatum* in a personal Action, and upon a *Capias pro fine* directed to the Sheriff.

7. Upon a forcible Entry, or Detainer found by Inquisition before the Justices, or upon their own View.

8. Upon a Judgment in Ejectment; but then the Officer must signify the Cause of his Coming. 5 *Rep.* 91.

9. In all Cases where the King is Party, or hath any Interest, *&c.*

A Justice, Sheriff, Constable, or Coroner may use Force in apprehending such as in their Presence attempt to break the Peace. *Dalt.* 396.

Where not.

But you cannot break open a Door upon an Execution at the Suit of a common Person, for 'tis illegal; and if the Officer is killed in doing it, 'tis only Manslaughter. *Jones* 429.

A Man was outlawed for Want of an Appearance; the Sheriff, without the Plaintiff's Privity, came to his House with a *Latitat* and a *Capias Utlagatum*, and the outward Door being open, they drew their Swords, and went up Stairs, and knock'd gently at the Door of the Chamber where the Man was in Bed, which was lock'd, but did not tell who they were, or what they came for; but the Door not being immediately open'd they broke it open, and arrested the Man upon the *Latitat*, and took a Bail-Bond and 40 *s.* for a *Supersedeas* to the Outlawry; for this the Sheriff was fined 200 *l.* *Hob.* 262, 63.

So where on Mesne Process the Sheriff knocking gently at the Door, and the Wife opening it a little, he forced in with his Sword drawn, and broke open the Door where the Defendant lay; this was unlawful, because the first Entry being by Craft and Violence was so. 1 *Vent.* 306.

But if the Defendant put his Hand out of the Window, which the Bailiff catcheth hold of, this is such a Taking, that he may justify the Breaking open the House.

Flight. See Forfeiture.

Forcible Entry.

THO' generally the Common Law abhors all Force, yet at Common Law one might enter into and detain with Force any Lands or Tenements, where his Entry was lawful; and this tho' in the Presence of an Officer, who could not interpose, unless some great Mischiefs, as Murder, *&c.* were committed.

What is a Forcible Entry within the Statutes.

If any one or more Persons come armed (especially with Weapons not usually born) to a House or Lands, and shall violently enter thereinto, this is a Forcible Entry within the Statutes; so having entered peaceably into an House, *&c.* shall forcibly put another out of his Possession. *Lamb.* 145.

So if after a Peaceable Entry he ſhall uſe any violent Threatning, &c. to the Intent to get him out of Poſſeſſion, this a Forcible Entry.

If divers come with Weapons (not uſually born by them) to an Houſe that is open, &c. and enter peaceably without any Reſiſtance, yet this a Forcible Entry; for it ſhall be intended, that they would have uſed Force if they had been reſiſted. *Lamb.* 146.

Putting back of a Bolt is Force, and entring into an empty Houſe with armed Men is a Force. *Moor* 656.

So if the Maſter enter with a more than ordinary Number of Servants that attend him: So if the Landlord eject or diſtrain for Rent with Force.

But a Forcible Entry cannot be without an actual Entry.

And it is no Forcible Entry for him that hath a Right of Entry to go over the Land (tho' with divers in his Company, and with Weapons) to Church, Market, &c. if he do not expreſs his Intent that he enters claiming the Land.

If one enter with Force into, &c. tho' no actual Poſſeſſion be obtained, yet it is a Forcible Entry, puniſhable by the Juſtice; but there is no Reſtitution to be made where there is no forcible Putting out or Holding out of Poſſeſſion, and found by a Jury.

If one whoſe Entry is lawful by fair Means, ſhall perſwade him that is in Poſſeſſion to quit the Houſe, and ſhut the Door, this is juſtifiable, if he doth not afterwards hold it with Force. *Dalt. c.* 89.

If I take a Man being out of his Houſe, and ſend my Servants to take Poſſeſſion in a peaceable Manner, and I detain him by impriſoning him, this is not a Forcible Entry, but a falſe Impriſoning, puniſhable by Law. *Lamb.* 149.

A forcible Detainer is a violent Act of Reſiſtance by Force, whereby the lawful Entry of the Juſtice or any other is thereby hinder'd, and this muſt be intended of the Poſſeſſion of Lands and Tenements, and not of the Perſon of a Man. Forcible Detainer what.

If a Man obtain Poſſeſſion by a Lawful and peaceable Entry, and continue peaceably therein for three Years, then he may keep it with Force againſt all Perſons but the King's Officers. 8 *H.* 6. *c.* 9. *Sect.* 7. 31 *Eliz.*

If a Juſtice comes to a Houſe where the Force is ſuſpected to be, and find the Doors and Gates ſhut, and the Party which is within deny him Entrance, this is a Detainer with Force, tho' he ſee no Perſon or

Arms, &c. and tho' there be but one Perſon in the Houſe, &c. *Lamb.* 148, 473.

If Men armed, or having any Arms lying by them, or a greater Number of People than the ordinary Family, or a greater Number of Arms than ordinary are brought into the Houſe, with an Intent to uſe them in the Defence of the Poſſeſſion; or if armed Men are ordered to lie in Readineſs in a Place not far diſtant, or to ſtop the Way of the Diſſeiſee with Force and Arms, ſo that he cannot enter, or keep Cattle with Force in another Man's Ground, claiming Common where he hath none at all; theſe Acts the Juſtice upon View ought to judge a Forcible Detainer. *Dalt. c.* 89.

If *A.* enters upon *B.* wrongfully, though peaceably, and put him out of Poſſeſſion, if *B.* comes with an Intention to enter, and *A.* threatens to kill him if he does, this is a Forcible Detainer, tho' only by Words. But if he deſires *A.* to open the Door to him, and he only denies, this is no Forcible Detainer.

If *A.* be Tenant at the Will of *B.* and *B.* enters and commands *A.* to quit the Poſſeſſion, and he denies it, this is no Forcible Detainer, unleſs ſome Act of Violence be uſed to maintain the Poſſeſſion.

If a Diſſeiſor make a Gift in Tail to *B.* who after a Claim made by the Diſſeiſee continues the Poſſeſſion with Force, this amounts to a Forcible Detainer; and when a Man's Entry is lawful, and the Poſſeſſion is detained from him with Force, the Party may pray the Aid of a Juſtice to remove the Force.

N. B. One Perſon alone may commit a Forcible Entry or Detainer. *Co. Littleton, f.* 257.

It ſeems an Infant above the Age of fourteen Years may commit a Forcible Entry or Detainer; and ſo may a Feme Covert, and ſhe may be impriſoned and fined, and the Husband ſhall not be charged with the Fine of his Wife.

It ſeems a Command, Conſent, or Agreement, &c. without an actual Entry, or being preſent when the Fact committed is not within the Statutes of Forcible Entry. *Dalt. c.* 89.

If divers come in Company to enter into any Lands, &c. and if but one of them commit a Force, they are all guilty. *Co. Lit.* 257. If more than three it is a Riot, and then the two next Juſtices may inquire within a Month by a Jury.

A Forcible Entry may be made upon a Leſſee for Years, or Will, or Copyhold, either by a Stranger or Leſſor himſelf.

To prevent Forcible Entries, it is enacted by Stat. 5. *R.* 2. *c.* 7. That no Man ſhall enter into any Lands, *&c.* with Force or Multitude, tho' he had a Right or Title of Entry. Statutes for remedying Forcible Entries and Detainers. 5 R. 2. c. 7. 15 R. 2. c. 2.

But the aforeſaid Statute not extending to a Forcible Detainer, or authorizing the Juſtices of Peace to puniſh the Tranſgreſſors of it, but by Indictment at their Seſſions, it was further provided by another, made 15 *R.* 2. *c.* 2. That if any Man detain or hold with Force after ſuch Forcible Entry; upon Complaint thereof to a Juſtice of Peace, he ſhall take ſufficient Power with him, and view the Place where the Entry and Detainer is by Force, and by his View and Record of the Force ſhall convict and impriſon the Offenders, till they have made Fine and Ranſom to the King.

By this Statute likewiſe the Sheriffs and all others are to be Aſſiſtant to the Juſtices, upon Pain of Fine and Impriſonment.

But ſtill there remained ſome Inconveniencies, which the Law did not remedy, as 1. If the Entry was peaceable, and the Detainer by Force. 2. If the Perſons were gone before the Juſtices came, they could proceed no further. 3. They had not Power to give Reſtitution to the Party grieved.

All theſe were remedy'd by Statute of 8 *Hen.* 6 *c.* 9. which gives Power to one or more Juſtices, by Warrant, to command the Sheriff to ſummon a Jury, to inquire of the Force, and to ſeize the Tenements as well in the Abſence as Preſence of the Offender. 8 H. 6. c. 9.

It likewiſe appoints the Statute of 15 *R.* 2. to be put in Execution, altho' the Detainer by Force was after a peaceable Entry, and all at the Coſts of the Party grieved.

It likewiſe inflicts the Penalty of 20 *l.* upon the Sheriff neglecting his Duty, to be recovered by Indictment at Seſſions, and divided between King and Proſecutor.

By the Statute of 31 *Eliz.* *c.* 11. no Reſtitution can be made upon Indictment of Force, *&c.* where the Party has had a peaceable Poſſeſſion for three Years. 2 Cro. 199. 31 Eliz. c. 11.

By the Statute of 21 *Jac.* 1. *c.* 15. the Juſtices have Power to give Reſtitution to Tenants for Years, Tenants by *Elegit*, Statute, *&c.* Copyholders, *&c.* as well 21 Jac. 1. 15.

as to Freeholders put out or detained by Force; ſo that now a compleat Remedy is given.

1. Againſt thoſe who enter with Force, and continue the Poſſeſſion peaceably.

2. Againſt thoſe who enter peaceably, and hold out with Force.

3. Againſt thoſe who enter and hold out with Force.

Any Juſtice of Peace, on Notice of a Forcible Entry into, or holding or detaining of any Poſſeſſion at the Charge of the Party grieved, ought to make due Execution of the Statutes in Manner following.

The Power of the Juſtices upon the Statute of 15 R. 2. c. 2. one Juſtice.

He ought to go to the Place, and take the Aſſiſtance of the Sheriff if he thinks fit, may break open the Door, if reſiſted, and may arreſt and commit the Offenders; he may command any one to aſſiſt him, and commit and fine thoſe who refuſe.

If he ſees the Force, he may record it, and commit the Offenders; for his View is a Conviction; and this Record being certify'd in *B. R.* the Court will grant Reſtitution, and aſſeſs a Fine. 8 *Rep.* 120.

Upon the Statute of 8 H. 6. two Juſtices.

If the Offenders are gone before the Juſtices come, then they may direct their Precept to the Sheriff, to impanel 24 Men of 40 *s. per Ann.* Freehold each of them, and 12 muſt be ſworn to inquire of the Force; and when found, the Juſtices may either themſelves put the Party in Poſſeſſion, or make a Precept to the Sheriff for that Purpoſe; and this muſt be done tho' they view the Force, if they intend to put the Party into Poſſeſſion.

The ſame Juſtices, before whom the Force was found, having made a Precept to the Sheriff to reſtore the Party, may grant a *Superſedeas*, if they ſee Cauſe; and a *Certiorari*, which muſt be deliver'd in open Seſſions, is a *Superſedeas*.

If the Sheriff return, that he cannot make Reſtitution becauſe he was reſiſted, he ſhall be fined, for he may raiſe the *Poſſe Comitatus*.

If a Jury impanel'd by the Sheriff by Virtue of the Juſtices Precept, ſhall make Default in their Appearance, the Juſtice may award an *Alias* and *Pluries*, and return 40 *s.* Iſſues upon the ſecond Precept on each of the Jury, and 5 *l.* Iſſues on the third Precept, and at every Time afterwards double.

If when the Juſtice comes there be no Reſiſtance or Shew of Force, the Juſtice cannot arreſt the Offender.

If a Forcible Entry be found by the Oath of the Enquirers, the Juſtice ſhall put the Party into Poſſeſſion; but

but then both the Putting and Holding out must be found.

Mayors of Cities and Burroughs in their Franchises have the same Authority as the Justices have in their County at large. 8 *H.* 6. *c.* 9. *sect.* 6.

What Remedy where the Party grieved does not apply to the Justices.

In Case the Party grieved doth not think fit to apply himself to the Justices, then he may have an Action of Trespass against the Person, who had no Title of Entry, and entring with Force, and may recover treble Costs and Damages; but if the Entry was upon good Title, though with Force, then you must proceed by Indictment. 8 *H.* 6. *Dalt. c.* 92.

Indictment.

In the Indictment the Entry must be *Vi & Armis*, or peaceably, and detaining with Force, according to the Words of the Statute of 8 *H.* 6. *Roll.* 2 *Abr. p.* 80.

So the Quality of the thing upon which the Entry was made must also be set forth, as into a Messuage, Meadow, Wood, &c. for entring into *Tenementa* generally is not good, because of the Uncertainty. 2 *Roll. Rep.* 46. So an Entry into two Closes *Prati sive Pasturæ* is not good. *Roll.* 2 *Abr. p.* 81.

It must be either *Manu forti* or *Multitudine Gentium*, and it must conclude *adhuc extratenet*; for without those Words there cannot be any Restitution, and likewise *contra Formam Statuti.* Roll. 2 Abr. p.82.

It must be certain therefore an Entry into *Messuagium*, or *Cottagium sive Tenementum*, is void. *Roll.* 2 *Abr. p.* 80. 1 *Mod.* 73. But *in Clausum* is good, for that is certain enough.

In the Indictment the Estate must be set forth; for 'tis not enough to alledge generally, that *possessionatus fuit*, because a Tenant at Will may be so possessed, and he is not within either of the Statutes. *Sid.* 102. 1 *Mod.* 73.

'Tis not the best Way to recite the Statutes in the Indictment, because if misrecited in any one particular it will be quash'd. *Cr. Eliz.* 93, 96, 106, 107, 697. 1 *Bulst.* 218.

The Indictment was for a Forcible Entry into a Copyhold, *viz.* That the Defendant *ejecit & disseisivit*, for which Reason it was quash'd; because Disseisin is applicable only to Freehold, and therefore in all Cases, except for a Freehold, it ought to be *ejecit, expulsit, & amovit.* Raym. 67. 4 Inst. 176.

Pleas to an Indictment.

Quiet Possession for three Years before the Inquisition found, is a good Plea to an Indictment of Forcible Entry. Stat 31 *Eliz. c.* 11. *Raym.* 84. This must be understood of a Term of Years; but if it had been

a Freehold, then he muſt ſet forth that he was ſeiſed, &c. and was in Poſſeſſion for three Years, &c. and 'tis not material to ſhew how ſeiſed, becauſe it is not the Title but the Poſſeſſion which is requiſite to be alledged. *Sid.* 156.

Defendant may demur to the Inſufficiency of the Indictment, and plead to the Inſufficiency of the Jurors not having 40 *s.* Freehold.

Defendant may bring a *Certiorari*, which is a *Superſedeas*. 1 *Cro.* 146. Or he may tender a Traverſe.

Where Defendant traverſes.

And if the Defendant traverſe the Indictment, the beſt Way for the Juſtice is to certify it into *B. R.* But if the Juſtice will try the Traverſe preſently, it muſt be by a new Jury, *Sid.* 287. and not by the Jury who found the Inquiſition of the Forcible Entry.

And a Traverſe is no *Superſedeas*, becauſe the Force being found upon the Indictment, the Juſtice may reſtore the Party grieved, or otherwiſe may certify the Indictment *ut ſupra*; but he who tenders the Traverſe muſt bear all the Charges of the Proſecution both before the Juſtice and in *B. R.*

Tho' a Man, continuing peaceably in Poſſeſſion, may by 31 *Eliz. c.* 11. juſtify a Detainer by Force, yet a Detainer of Lands by Force for three Years or more, where a Man comes to them by an unlawful Title, will not excuſe the Puniſhment by the Juſtices, by 8 *H.* 6. *c.* 9.

Where Juſtice may remove Force, and grant Reſtitution.

Where a Force is committed, or there is a Detainer of Poſſeſſion by Force, a Juſtice is obliged to go to the Place and make Inquiſition, tho' he receives Notice of it by others than the Party injured; and if the Force be found, he is to make Reſtitution. *Mich.* 7 *Edw.* 4. And no other Juſtice of Peace can grant a *Superſedeas*, or ſtay the Reſtitution. *Dyer* 187.

Where there are Tenants in Common, or Jointenants of Lands, &c. and one of them puts the other out of Poſſeſſion by Force, a Juſtice of Peace is to enquire, remove the Force, and reſtore the Poſſeſſion.

And if a Man take a Diſtreſs for Rent by Force, or a Commoner be with-held from his Common by Force, or if any Perſon keeps his Beaſts in the Ground of another by Force, a Juſtice may remove the Force, but not award Reſtitution. *Mich.* 21 *Ed.* 4. 10 *H.* 7. *fol.* 9. *b. Pl.* 21. So of Tithes, 3 *Cr.* 201. *Dyer* 141.

After Enquiry the Juſtice may break open the Houſe, and reſtore the Party himſelf.

Where they find a Force, and make a Record of it on their own View, they may commit the Offen-

ders, but cannot grant Reſtitution. 1 *Vent.* 308. *Sid.* 156.

If the Defendant traverſe the Indictment, the beſt Way for the Juſtice is to certify it into *B. R.*

But after a Traverſe the Court cannot grant Reſtitution. 1 *Vent.* 365. But in *Dyer* there is a contrary Opinion. Nor can they award Reſtitution after a *Certiorari* to remove an Inquiſition of a Forcible Detainer.

The Certificate of the Juſtices ought to ſhew the Time when the Complaint was made, becauſe ſuch Certificate is in Nature of an Indictment, and traverſable. 2 *Roll. Rep.* 39.

No other Juſtice or Juſtices, (except *B. R.*) but he or they before whom the Force is found, can award Reſtitution.

If an Indictment be removed, and no Proſecution the next Term, the Court may award Reſtitution.

N. B. A Man cannot juſtify the Breaking open of an Houſe by Virtue of a Warrant from a Secretary of State; and no Houſe can be broke open, unleſs there is a Civil Officer preſent.

But if a Man hath a Warrant to apprehend another, and miſtaking the Law breaks open the Door to execute it, he is only a Treſpaſſer, and not guilty of Felony, becauſe there muſt be a felonious Intent to make one guilty of Felony; but if after a Door is broke open, one of the Company ſteals any Thing, 'tis Felony only in him, and not in the reſt, unleſs they were aſſenting to it.

Reſtitution is to be made only to the ſame Perſon who was put out; ſo that if a Man be put out of the Poſſeſſion of Lands by Force, and dieth, the Juſtices of Peace have no Power to give Reſtitution to his Heirs. The ſame if Tenant for Years be ouſted of his Term by Force, and dies before Inquiſition, the Juſtices cannot reſtore the Executor to Poſſeſſion. And the ſame in all other Caſes. But the Perſon committing the Force may be indicted, and fined by the Juſtices of Peace. 2 *Leon.* 327. *Sever's* Caſe.

A *Certiorari* was brought where a Record of a Force was made by a Juſtice of Peace, but he omitted to commit the Offenders, and to fine and impriſon them, upon the Record in *B. R.* a Motion was made, that the Offenders might be fined and impriſoned; but the Court refuſed to do it, becauſe the Record of the Force was void for Want of Commitment immediately, according to the Statutes. *Moor. Rep.* 848.

In

In every Indictment for Forcible Entry, the Estate that the Party hath in the Premisses, ought to be shewn; and an Indictment of Forcible Entry made upon a Lease for so many Years, if a Person should so long live, was quash'd; because it did not appear by the Indictment that the Lessee had any Title to the Land at the Time of the Force committed; and for that it was not averr'd, that the Person was alive at the Time of the Forcible Entry. *Styles's Rep.* 147. *Bray's* Case.

If Fine be set on Conviction, Defendant must bring his Writ of Error where there can be no Restitution, &c.

Upon a Conviction of Forcible Entry, if a Fine be set, the Conviction cannot be quash'd on Motion, for the Defendant must bring his Writ of Error; but it is otherwise if no Fine be set, because then it may be quash'd on Motion. 2 *Salk.* 450.

If an Inquisition of Forcible Entry be remov'd from before Justices into *B. R.* by *Certiorari*, there can be no Restitution if the Defendant either traverses the Force, or pleads three Years quiet Possession before the Force, for these are to be tried first. 1 *Vent.* 265. 1 *Salk.* 260.

Expulsion and Disseisin must be expresly alledged in Inquisitions and Indictments on Forcible Entries; but Tenants at Will are not within the Statute. *Popham* 205. *F. N. B.* 248.

Where B R. may grant Re-restitution.

If a Man be restored upon an insufficient Indictment, which is removed into *B. R.* that Court may cause the Party to be restored that before was put out by the Justice of Peace.

So two Justices of Peace, that were present at the Finding of the Force, may supersede a Writ of Restitution grounded upon an insufficient Indictment; and if it were found at the Quarter-Sessions, the *Supersedeas* shall be granted under the *Teste* of one of those Justices only, who were present at the Finding of the Force. *Dyer* 187.

An Indictment, that he entered and detained with Force, is traversed, and found, that he entered with Force, but not held with Force, is good, and Restitution shall be awarded; and if upon a Traverse it is found, that one entred with Force, and the other detained with Force, yet the Party shall be restored. *Bro. Fore.* 15.

But where the Jury found *quoad* the Entry *Ignoramus*, and *quoad* the Detainer *Billa vera*, upon Restitution awarded by the Justices of Peace, *B. R.* set it aside, and granted a Re-restitution, because the Indictment being intire for the Entry as well as the Detainer;

Detainer; and the Jury having found but one, 'tis therefore void. *Yelv.* 99, 100. 2 *Cro.* 151. *Sid.* 97, 414. *contra.*

Indictment *quare in medietatem intravit* is void; for the Entry must be into the Whole. *Palm.* 419.

If it be found by one Inqueſt, that *A.* put out *B.* with Force, and it is found by another Inqueſt, that *B.* diſſeiſſed *A.* with Force, now either Party may pray Execution againſt the other; but he who firſt obtained it may be put out by Virtue of the ſecond Writ of Reſtitution. *Bro. Forc.* 15.

When Juſtices of Gaol-Delivery, or Oyer and Terminer may grant Reſtitution.

The Juſtices of Gaol-Delivery, or of Oyer and Terminer, or Juſtices of the Peace at their General Seſſions, cannot grant Reſtitution, unleſs the Indictment was taken before them. But if the Juſtice, before whom ſuch Inquiſition was found, die before Reſtitution made, or before it be removed, by ſome Opinions, the reſt of the Juſtices at the General Seſſions may grant a Writ of Reſtitution. But the Court of *B. R.* either upon Certificate, or Removal by *Certiorari*, or a Delivery thereof in Perſon by the Juſtice before whom ſuch Indictment was taken, may award Reſtitution; but neither *B. R.* nor any (beſides him who made the Inquiry) can perſonally reſtore but only by Precept to the Sheriff. *Dalt. c.* 94.

And the ſame Juſtice before whom the Force is found, having granted a Writ of Reſtitution, may after ſtay it by *Superſedeas* to the Sheriff, and no other Juſtice beſides can do it.

Any Perſon of the Family in a Houſe preſerves the Poſſeſſion, but not his Cattle being upon the Ground.

Two Jointenants, or Tenants in Common, and one puts the other out forcibly, he may have Treſpaſs upon 8 *H.* 6. *c.* 9.

The Stat. 21 *Jac.* 1. *c.* 15. is to be taken ſtrictly, and not by Equity; and an Indictment upon it for a Copyholder, omitting *per Copiam Rotulorum Curiæ*, was quaſh'd. *Latch* 182.

How Certiorari's muſt be delivered and allowed.

By 21 *Jac.* 1. *c.* 8. All Writs of *Certiorari* muſt be delivered at the Quarter-Seſſions in open Court, and ſhall not be allowed, unleſs the Party indicted become bound to the Proſecutors in a Bond of 10 *l.* upon Condition to pay to the Proſecutors ſuch Coſts and Damages, within one Month after the Conviction of the Party indicted, as ſhall be aſſeſſed by the Juſtices in their Seſſions; and altho' the Indictment be found after the *Teſte* of the *Certiorari*, it is not material.

Re-

In what Cases B. R. generally grant Re-restitution.

Re-restitution is ordinarily granted by *B. R.* in these Cases.

If Restitution be made without Enquiry, it is punishable in *B. R.*

1. If the Indictment removed be quash'd for Matter in the Body of it, or Exception.

2. If a *Certiorari* hath issued which hath not been allowed, or the Proceedings not staid thereby.

3. If any indirect Practice has been used to avoid the Effects of the *Certiorari.*

4. If the Justices below do not allow the Plea of three Years Possession, or otherwise misbehave themselves.

And sometimes Restitution is denied, where the Party in Possession offers to appear and try the Right.

Upon View of a Force Justices of Peace are Judges, and may set a Fine; and if there be Error, a Writ of Error may be brought. *Stile* 300, 303.

It is in the Election of a Justice of Peace to set a Fine upon the Party, and refuse the Party to his Traverse upon View of the Force. *Stile* 360.

It is not necessary that the next Justice of Peace should remove a Force; but all the Justices of Peace of the County are bound to do it. *Stile* 246.

If a *Certiorari* be brought to remove an Indictment of Forcible Entry against several, some put in Bail for the Damage, 'tis good. *Stile* 360, 361.

One Justice of Peace alone may enquire of a Forcible Entry, and remove it by Statute 8 *H.* 6. *c.* 9.

If a Man cometh to Lands, *&c.* by an unlawful Title, tho' he hath detained the Land by Force for three Years or more, yet that shall not excuse his being punished by the Justices of Peace according to the Stat. 8 *H.* 6. *c.* 9. *Pas.* 14 *H.* 7. *f.* 28. *a. Pl.* 4.

But if a Man hath been seized by a good and just Title for three Years, and after is disseised by Wrong, and after he re-enters, he may retain with Force; for he is remitted, and in by his former Title 23 *H.* 8. *Br.* New Case, *f.* 5. *b. Pl.* 31. *Br. Abr.* Title *Forcible Entry. No.* 22.

If a Man hath been twenty Years in peaceable Possession of Lands, and be once removed from the Possession, he cannot get and retain the same with Force. *Dyer* 141, 142.

There may be a Forcible Entry into the Moiety of a Manor. *Lat.h* 224. *Beverley's* Case.

Not where there is a general Pardon.

If a Man be indicted for a Forcible Entry upon 8 *H.* 6. *c.* 9. and before Restitution the Force is pardoned by

by Statute or General Pardon, there ſhall be no Reſtitution on that Indictment, becauſe the firſt Force and Offence is pardoned. *Hill.* 4 *Jac.* 1. *Yelv.* 99. *Fawcet's* Caſe. *Cro. Jac. p.* 148. *Noy* 199. And all the Reports ſay it was ſo reſolved in a Caſe between the Lord *Stafford* and Sir *Thomas Thynn.*

An Indictment for a Forcible Entry was quaſh'd becauſe the Party had made no Title. *Mich.* 1649. *Style's Rep.* 174.

Altho' one may be diſſeiſed of a Rent or Common by Force, which is inquirable and puniſhable if it be found; yet one may not be indicted or committed for entering his own Land with Force, or holding his own Land with Force againſt a Commoner. And this Statute is not to be extended againſt any but him who enters unlawfully, and ouſts another of his lawful Poſſeſſion. *Mich.* B. *R.* 10 *Car.* 1. *Cr. Car.* 486. *Pl.* 10. *Sydnam* and *Parr's* Caſe.

Where one is indicted of a Forcible Entry before the Juſtices of Peace, and offers to traverſe the Force, and the Juſtices of Peace refuſe it, but award Reſtitution; this being removed, the Court ſaid the Juſtices ought to have accepted of the Traverſe; for the firſt Finding is in the Nature of a Preſentment, which upon the Traverſe of the Party ought to be preſently tried; and if it be found no Force, no Reſtitution ought to be. And the Court awarded Reſtitution. *Trin.* 18 *Car.* 2. B. *R. Sid.* 287. *Pl.* 1. *Rex* verſus *Parker & al'.*

If the Juſtice record a Force, and ſend to Priſon, where no Force is, the Party is remedileſs; if a Reſcue be made of the Priſoners committed by them, they may record this alſo.

If it be found that one is ouſted by Force, and thereupon he is reſtored, and after he is ouſted by Force again by the ſame Party, in this Caſe he ſhall not have Reſtitution the ſecond Time upon the ſame Inquiſition.

If the Juſtice, upon Complaint or Notice given of a Force, do not remove the Force, record it, and commit the Offenders, it is puniſhable in B. *R. Dalt.*

If the Offenders are gone, the Juſtice may ſend his Warrant, and commit them 'till they find Surety for their good Behaviour. *Dalt.* 84.

Though the Perſon uſing the Force has the Right; yet is the Juſtice to remove him. *Black.* 155.

A Re-

A Record of a Forcible Entry.

Eſſex, ſſ. MEmorand' quod A. B. de, &c. tertio die Januarii Anno Reg', &c. queſtus eſt mihi E. S. Mil' un' Juſticiar' dict' Dom' Reg' ad pacem in dicto Com' conſervand' aſſign' quod J. O. & J. S. de, &c. & alii Pacis dict' Dom' Reg' perturbatores ignoti in domum manſionalem ipſius A. B. in H. prædō manu forti ingreſſi ſunt & ipſum A. B. inde * diſſeiſiverunt ac eandem domum manu forti & armata potentia adhuc extrahent ac proinde petit a me ſibi in hac parte remedium apponi qua quidem queremonia & petitione audita ego præfat' E. S. immediate ad dictum domum perſonaliter acceſſi ac in eadem domo adtunc inveni præfat' J. O. & J. S. domum illam manu forti & armata potentia, viz. baculis gladiis bombardis, &c. tenentes contra formam Statut' in hujuſmodi caſu edit' & provis' ac propterea ego præfat' E. S. prædict' J. O. & J. S. adtunc & ibidem arreſtari priorimeque Gaole dict' Dom' Reg' apud H. in dicto Com' duci feci ut de dictis manu forti & detentione per viſum & recordum meum convict' ibidem morarur' quouſque finem dict' Dom' Regi pro tranſgr' ſuis prædō' fecerint. Dat' apud H. prædō ſub Sigillo meo die & anno ſupradictis.

* If it be a Freehold, otherwiſe it muſt be expul' ejecer' & amoveri'.

A Mittimus upon View of a Forcible Detainer.

15 R. 2. c. 2.
8 H 6. c. 9.
31 Eliz. c. 11.
1 Bulſtr. 101.
2 Bulſtr. 221.
3 Bulſtr. 70, 92.

Kent, ſſ. A. C. *Eſq*; (*one of his Majeſty's Juſtices of the Peace aſſigned to keep the Peace in the County aforeſaid*) *to the Keeper of Her Majeſty's Gaol for the ſaid County at* Maidſtone *in the County aforeſaid, Greeting.* Whereas, *upon Complaint unto me by* A. B. *of* L. *in the ſaid County, I did this preſent Day go to the Dwelling-houſe of the ſaid* A. *in* L. *aforeſaid, and there did find* C. D. *of*, &c. E. F. *of*, &c. *forcibly with ſtrong Hand and armed Power holding the ſaid Houſe, againſt the Peace of our Sovereign Lord the King, and againſt the Form of the Statute in that Behalf made and provided.* And therefore *I herewithal ſend unto you the Bodies of the ſaid* C. D. E. F. *and* G. H. *convicted of the ſaid forcible Holding by my own View, Teſtimony, and Record, commanding you* (*in His Majeſty's Name*) *to receive them into the ſaid Gaol, and them there ſafely to keep until they had made Fine and Ranſom to his ſaid Majeſty for their ſaid Treſpaſſes, and ſhall be thence*

thence delivered by the Order of the Law of this Land. Hereof fail not, &c.

A Precept to the Sheriff, in the Nature of a *Venire Facias*, to ſummon a Jury.

Eſſex, ſſ. J. S. Baronettus unus Juſticiar' Dom' Reg' ad pacem in Com' præd' conſervand' aſſign' Vicecomiti ejuſdem Com' ſalutem. Ex parte Dom' Reg' tibi mando quod Venire Facias coram me apud V. in Com' præd' octavo die Januarii pror' futur' viginti quatuor probos & legales homines de Vicineto de V. prædict' quorum quilibet habens 40 s. terrarum & tenementorum vel reddit' ad minus per annum ultra reprisas ad inquirend' ſuper ſacram' ſuum pro dict' Dom' Reg' de quodam ingreſſu manu forti facto in meſſuagium cujuſdam J. O. apud V. præd' contra formam Statut' in hujuſmodi caſu edit' & provis' & videas quod ſuper quemlibet juratorum per ſe in hac parte impanellând' viginti ſolidos de exitibus ad præfat' diem retornes & hoc nullatenus omittas ſub pena viginti librarum & habeas ibi tunc hoc præceptum Teſte me præfat' J. P. 10 die Januarii Anno Regni, &c.

Upon the Stat. of 8 H. 6. c. 9.

An Inquiſition upon the Force.

Inquiſitio capta pro Domino Reg' apud L. in Com' Eſſex, Octavo die Januarii Anno Regni, &c. per ſacram' C. L. R. R. H. S. W. N. &c. coram J. P. Baronet' un' Juſtic' dict' Dom' Reg' ad Pacem in Com' præd' conſervand' Aſſign' nec non ad diverſas Felonias Tranſgreſſiones & alia Malefacta in eodem Com' perpetrata audiend' & terminand' qui dicunt ſuper ſacram' ſuum quod J. O. de H. in Com' præd' Yeoman, legitime & pacifice ſeiſitus fuit in Dominico ſuo ut de feodo de & in uno Meſſuagio cum pertin' in L. præd' & poſſeſſionem ſuam pacificam præd' continuavit quouſque J. B. de, &c. & J. S. de, &c. & alii Malefactores ignoti tricesimo die Decembris ult' præterit' vi & Armis, viz. baculis gladiis & bombardis in Meſſuag' præd' cum pertin' intraverunt ac ipſum J. O. inde * diſſeiſiverunt & manu forti expulerunt & ſic inde expulſum & diſſeiſitum ab eodem Meſſuagio præd' tricesimo die Decembris uſque diem captionis hujus Inquiſitionis manu forti & armata potentia extra-

* This Word is abſolutely neceſſary upon the Statute 8 H. 6. c. 9.

extratenuerunt & adhuc extratenent in magnam perturbationem pacis dict' Dom' Reg' ac contra formam Statut' in hujusmodi casu edit' a Prohis' ubi nullus eorum nec aliquis alius cujus statum ipse vel ipsi habent aliquid in pred' Messuagio cum pertin' vel alicqua inde parcella habuit vel habuerunt infra tres Annos proximos ante ingressum suum pred nec aliquo alio tempore ad notitiam Jurat' pred.

A Warrant to the Sheriff for Restitution.

Kelway, p. 41. 3 Bulst. 71. Dyer 141.

Essex, ss. R. K. *Esq; one of her Majesty's Justices, assigned to keep the Peace in the County aforesaid, to the Sheriff of the said County, Greeting. Whereas by a certain Inquisition taken before me at* A. *in the County aforesaid, the second Day of* June, &c. *upon the Oath of* A. B. C. D. E. F. &c. *according to the Form of the Statute, in Case of forcible Entry made and provided, it was found that* G. H. &c. *and others (as in the Inquisition) as by the said Inquisition of Record, doth more fully appear: These are therefore (in His Majesty's Name) to Will and Require you (with the Power of the County, if need require) to go to the said Messuage,* &c. *and other the Premisses, and to cause the same with their Appurtenances to be reseized; and the said* C. D. *to be restored in, and to his full Possession thereof, as he was before the same Entry, according to the Form of the aforesaid Statute. Hereof fail not,* &c.

If the Proceedings are at the Sessions by way of Indictment, then the Form is,

Essex, ss. JURR', &c. quod J. O. & J. S. de, &c. Assumptis & Associatis sibi ipsis aliis malefactoribus & Pacis Dom' Regis perturbator' modo hostili armatis quorum nomina Juratores pred penitus ignorant nono die Januarii * Anno, &c. apud H. in Com' pred vi & armis, viz. baculis, gladiis, bombardis, lapidibus & aliis Armis defensibis & invasibis in unum Messuagium cum pertin' in H. pred † super pacificam possessionem cujusdam R. N. intraverunt & quilibet eorum intravit de quo quidem Messuagio pred R. N. adtunc & adhuc possessionatus fuit pro termino septem Annorum adtunc ventur' & pred J. O. & J. S. & alii Malefactores pred vi & Armis pred' R. N. a Possessione sua pred ejecerunt expulerunt

* If it had been in unum tenementum, it had been naught. 3 Roll Rep. 46.

† If he had been of a Freehold, it should be adtunc existens liber' tenementum R. N. 1 Mod. 371.

pulerunt & amoverunt & prefat' R. N. sic inde expulsum a' pred' Messuagio cum pertin' illicite ac manu forti adtunc extratenuer' & * adhuc extratenent contra pacem dict' Dom' Reg', &c. & contra formam Statut' in hujusmodi casu edit' & Proviso'.

* The Word adtunc is necessary, because Restitution is to be awarded. 1 Vent. 2, 3. yet if the Indictment began with the Day, Time, and Place, all which follows shall be taken to be the same Time. 1 Bulst. 177. 1 Yelv. 28. * The Omission of those Words had made the Indictment naught.

There are many Niceties in drawing this Indictment; and first as to the Entry into Lands, 'tis always necessary to say *adtunc existens liberum tenementum*; but to say *adtunc & adhuc* is *repugnant*, because it cannot be *adhuc* his Freehold, for he is disseised. 3 *Bulst.* 68. *Noy.* 131. *Latch* 109.

In the Case of Freehold. Palm. 426. Latch. 109. Cro. Eliz. 754. Her. 73. March 6. 2 Roll. Rep. 65.

But it ought to conclude with *extratenuer' & adhuc extratenent*; yet in my Lord *Rolle* we have a Case of an Indictment that was quashed for not setting forth that the Entry was upon such a Place, *adtunc existens liberum tenementum*, and the later Autorities seem to agree with him.

The Offender must be named of a Vill and County, because Process of Outlawry lieth against him for his Offence.

Sid. 132. Cro. Eliz. 32. 1 Bulst. 201.

Then the Place on which the Entry was made must be certain, and therefore if 'tis laid to be on a Rood of Land, 'tis void.

1 Mod. 73. Cro. Eliz. 475. 1 Mod. 73.

Yet for entring into a Close, and not saying how many Acres, was held good.

It must always set forth the Estate of the Party grieved, and therefore if 'tis for a Term of Years, 'tis not sufficient for the Party to set forth, that *possessionatus fuit* generally; but he must shew for how many Years; if it be for a Freehold, then he must say *existens liberum tenementum*. 'Tis true, formerly it hath been held, That those Words are implied by the Word *Disseisivit*, because a Man cannot properly be disseised of any Thing but a Freehold; but it hath since been adjudged otherwise. 2 *Leon.* 102. 4 *Leon.* 197. 1 *Vent.* 306. *contra.*

It must likewise be *inde disseisivit*, for if that Word is left out, 'tis naught. *Noy* 120.

But if the Word *illicite* is left out, that will not hurt it, because *disseisivit* implied it. *Noy* 125.

It must be set forth to be done *manu forti*, to distinguish it from all other Trespasses, and those Words are peculiar to an Indictment for this Offence. *Style* 135. *Cro. Eliz.* 461. 2 *Cr.* 199. 2 *Bulst.* 258. *Noy* 155.

By a Copyholder.

Eſſex, ſſ. JURY', &c. quod T. P. de H. in Com' prædo Gen' ſeiſitus fuit in Dominico ſuo ut de feodo ad voluntatem Domini ſecundum cons' manerii de H. in Com' * prædict' de uno Meſſuagio cum pertinen' in H. præd' ut tenens per † copiam Rotulorum Curie ejuſdem manerii & ſic inde ‡ ſeiſitus exiſtens ſeiſinam & Poſſeſſionem ſuam præd' pacifice & quiete dein' continuavit quouſq' J. S. de H. præd' Blackſmith, 24 die Januarii Anno, &c. in Meſſuagium prædict' cum pertin' vi & Armis, viz. Baculis, &c. intravit & ipſum T. P. de poſſeſſione & ſeiſina ſua prædict' inde manu fortı & armata potentia expulit & amovit & ipſum T. P. ſic expulſum & amotum ab eodem Meſſuagio cum pertin' a prædict' 24 die Januarii Anno ſuprædicto uſq; ad hunc diem cum hujuſmodi fortitudine & armata potentia extratenuit & adhuc extratenet contra pacem Dom' Reg' nunc & contra formam Statut', &c.

* Latch. 182.
† Vent. 89.
‡ If it had been ſeiſitus & poſſeſſionatus, fuit, it had been naught, becauſe uncertain. 1 Vent. 109.

Forfeitures.

To what Time the Forfeiture of Lands ſhall relate.

FOrfeiture is occaſioned by ſome Offence againſt Law, and this Difference is to be obſerved, that where Lands are forfeited, it ſhall relate to the Time of the Offence committed; but where Goods and Chattels are forfeited, the Goods and Chattels of the Criminal are his own 'till Conviction or Attainder.

To what Time the Forfeiture of Goods, &c.

And the Sheriff or other Officer ought not to remove them, becauſe the Property is not alter'd 'till Conviction, though uſually they ſecure the Goods of the Felon as ſoon as he is apprehended; but this is expreſly againſt the Statute of 1 *Rich.* 3. *c.* 3. by which 'tis enacted, That none ſhall ſeize the Goods of any arreſted for Suſpicion of Felony, before he is convicted or attainted thereof, upon Pain to forfeit double the Value of the Goods, *&c.* to be recovered by the Party grieved in an Action of Debt, *&c.*

If Coroners find fugam fecit, Goods are forfeited.

If the Coroner's Inqueſt find *fugam fecit* he forfeits his Goods, notwithſtanding he ſhould be afterwards acquitted of the Felony by the Petty Jury, and they ſhould find that he did not fly for the ſame: So if an innocent Man is purſued as a Felon, and he fleeth and

and waveth his own Goods, they are forfeited, as if they had been ſtolen, for to fly from Trial, looks like Guilt.

The Reaſon is, becauſe the King's Prerogative may take the Advantage of that Record which is moſt for his Intereſt, and that is the Record of the Coroner. *Stamf. Pl. Coron.* 183. *b.*

If a Man is acquitted of the Felony, but the Jury find *quod fugam fecit*, he ſhall loſe his Goods which he had at the Time of the Acquittal, and not at the Time of the Flight. *Goldsb.* 135.

The Forfeitures of Land.

Forfeiture.

In Treaſon.	Lands in Fee, or in Tail, or for Life, or Years. After Conviction or Attainder.	All the Goods and Chattels of what kind ſoever.	26 H. 8. c. 13. 5 E. 6. c. 11.

Lands.

In Petit Treaſon.	For Life. In Fee for a Year and a Day, to the King. In Tail during Life of Offender.

Lands.

In Felony.	For Life. In Fee Simple for a Year and a Day from the Time of the Felony committed. To the King. And Profits during Life of Offender.	Goods and Chattels from the Time of the Attainder or Conviction, all Debts due to him upon Statute, Bond, Simple Contract, and upon Account, and yet the King ſhall not pay ſuch Debts as the Felon owed, and if the King aſſign the ſame, the Party may ſue either in the King's Name, or his own. *Co. Lit.* §. 745. f. 390. *Dyer* 30.

Goods only.

In Manſlaughter, and *Felo de ſe*, Petit Larceny.	Offenders forfeit Goods and Chattels.

Goods only.

In Chance-Medly, & *se defendendo.* } Offenders forfeit Goods and Chattels, but they have their Pardon of Courſe.

Felon may ſell his Goods before Conviction.

But a Felon and even a Traitor, may *bona fide* ſell his Goods for his Maintenance, any Time before the Attainder.

By the Common Law, not only the Felon's own proper Goods, but alſo ſuch Goods as he had ſtol'n, and for which he is convicted, were forfeited, to the King, unleſs they had been taken upon Hue and Cry, or freſh Purſuit.

But now by the Statute of 21 *H.* 8. *c.* 11. if any Perſon hath Goods ſtolen from him, if the Felon be thereof found guilty by Evidence given by the Owner of ſuch Goods, or the Party robbed, or by his Procurement, then ſuch Owner ſhall be reſtored to his Goods by a Writ of Reſtitution, altho' he made no freſh Purſuit, or Hue and Cry.

Forfeitures of a Recognizance taken for the Peace.

Whatſoever is a Breach of the Peace, the ſame is a Forfeiture of the Recognizance. *Dalt.* 181.

Fair or Market, Court, Liberty, &c. forfeit by Non-Uſer where the Subject has an Intereſt, otherwiſe of Parks, &c. 2 *Cro.* 155. or for Miſuſer of Liberties.

Forgery.

Forgery how puniſhable.

IS an Offence at Common Law, for which the Offender is to ſtand in the Pillory, be fined and impriſoned during the Pleaſure of the Court. *Ray.* 81.

'Tis likewiſe puniſhable by Statute of 5 *Eliz.* *c.* 14. though Mr. *Dalton* is of Opinion, Juſtices of Peace can't meddle with theſe Offenders, becauſe they can't take Notice of the firſt Conviction; beſides by the expreſs Words of the Statute of 5 *Eliz.* *c.* 14. Juſtices of Aſſize, and of *Oyer* and *Terminer* are to hear and determine this Offence. *Cr. Eliz.* 87, 607, 697. *Co.* 9, 118.

Since the Stat. Indictments for Forgeries have been rare at Common Law.

But many Indictments have been brought ſince upon the Stat. for forging 1. Falſe Deeds. 2. Writings ſealed. 3. Court-Rolls. 4. Will to the Intent that the Freehold of the Lands, or the Right or Title thereof, may be troubled or charged.

Every Indictment must pursue some of the Clauses mentioned in the Stat. *quod vide*. *Dyer* 322. *B.* 1 *Lut.* 190. *Sid.* 278.

The Punishment for some Forgeries is Pillory, and to have his Ears cut off there, and his Nostrils slit, and to forfeit the Profits of his Lands to the King, during his Life, and to be committed during his Life. The Punishment.

For other Forgeries is Pillory, Loss of one of his Ears, and to suffer but one Year's Imprisonment without Bail.

But the second Offence in all Forgeries, is Felony. 5 *Eliz. c.* 14. but is not enquirable by the Justices of Peace. *Dalt.* 387. *Cr.* 56. What is not Forgery.

Now Forging a Deed, by which Goods and Chattels are conveyed, is not within the Stat. neither is Razing out of a Bond of 100*l.* the Word *Libris*, and putting in the Word *Marcis*; but if he had increased the Sum, it had been otherwise. 3 *Leon.* 170. *Moore* 619.

Forging an Assignment of a Lease is not within the Stat. because it doth not charge the Lands, but only transfers an Interest which was in Being before. *Noy* 42. *Moore* 655. Nor Forgery to the Person's own Disadvantage. *Moore* 629.

To leave out a Clause in a Will which the Testator ordered to be inserted, is not Forgery; so to bring a Will written without any Direction to one *Non compos mentis*, who signs it, is not Forgery.

But if the Devisor directs a Gift to one for Life, Remainder to another in Fee, and the Writer omits the Estate for Life, so that the Remainder Vests immediately upon the Death of the Devisor, this is Forgery. *Noy* 18. *Moore* 760.

Sessions have no Authority to take an Indictment for Forgery, the Justices have no Power, but what they have by Act of Parliament, and the general Words of their Commission *de omnibus aliis malefactis & transgressionibus quibuscunque* must be understood of such Crimes, as they have Power over by the several Statutes which created or enlarged their Jurisdiction. *Mich.* 9. *Annæ B. R. Co.* 9. 118. Sessions have no Power to take an Indictment of Forgery.

Forgery can have no Accessary, all are Principals. *Moore* 606. *Plowd.* 913.

But by an Act made 2 *G.* 2. 'tis enacted, That if any Person shall falsely make, forge, or counterfeit or procure the same, or wilfully act or assist in the false making, or counterfeiting any Deed, Will, Testament, Bond, Writing Obligatory, Bill of Exchange, Forgery made Felony by 2 Geo. 2.

or Promissory Note for Payment of Money; or any Acquittance, or Receipt, either for Money or Goods, with Intention to defraud, or shall utter or publish as true any false or counterfeit Deed, &c. knowing the same to be false, being thereof convicted, he shall be guilty of Felony without Benefit of Clergy.

This Act does not extend to *Scotland*.

Nor shall any Attainder by this Act work any Corruption of Blood, Loss of Dower, or Disherison of Heirs.

Act to be in Force for five Years.

The Act to be in Force for five Years from the 29th of *June*, 1729, and from thence to the End of the then next Session of Parliament.

Indictment for forging a Deed.

If the Information and the forged Lease vary in the Name of the Lands, 'tis void; but 'tis material to alledge some Parcel of Land, which may certainly be proved, and as to that you may say inter alia, Hob. 272.

Essex, ss. JURR', &c. quod A. B. nuper de C. &c. 10 die Aprilis Anno Regni, apud C. in Com' pred' ex sua propia mente & falsa imaginatione & covina quoddam falsum factum, viz. quandam Indenturam per quam quidam H. R. barganizaret & venderet omnes terras suas vocat', &c. cum pertin' in L. in Com' pred' cuidam L. M. scienter & falso fabricavit fecit & eandem Indenturam adtunc & ibidem, publicavit & legi fecit & in evidentiam ostendit ad molestand' perturband' Stat' possession' & titulum & interesse præfat' R. in terris & tenementis pred' per quod idem H. R. de possession' titulo & interesse suis ad terras & tenementum pred' cum pertin' pregravat' & verat' existit in dict' Dom' Regis contempru' & ipsius H. R. dampnum & gravamen ac contra formam Statut' in hujusmodi casu edit' & Provis' nec non contra pacem dict' Dom' Reg' Coron' & dignitatem suas.

Forestallers, Regrators, and Engrossers.

Forestaller who.

BY Statute 5 & 6 *Ed.* 6. *c.* 14. a Forestaller is one who buys, or causeth to be bought, any Corn, or other Victuals whatsoever, which is coming to the Fair or Market, City, &c. to be sold before it come to the Fair or Market: Or Persons who dissuade the Owners of such Goods to bring the same to the Market, or when there, persuade them to advance the Price, or shall make any Bargain, Contract, or Promise, for the Having or Buying the same, or any Part thereof, so coming

coming as aforeſaid, before the ſaid Merchandize or Victual ſhall be in the ſaid Market, Fair, City, &c. ready to be ſold. Stat. 5 & 6 *Ed.* 6. *c.* 14.

Ingroſſer who.

An Ingroſſer is one who buys Corn growing upon the Ground (otherwiſe than by Demiſe or Grant) or any Butter or Cheeſe, or other Victuals, with Intent to ſell the ſame again for unreaſonable Profit, and doth ſell the ſame accordingly.

Regrator who.

A Regrator is one who in open Fair or Market, doth buy and get into his own Hands, Corn or other dead Victuals, and the ſame doth ſell again in ſome other Fair or Market within four Miles thereof. *Ibid.*

Butter, Cheeſe, Fleſh, Fowl, &c. and all Victuals are Goods within the Acts of Foreſtalling, Ingroſſing, and Regrating.

Where and how puniſhed.

Offenders of this Nature are puniſhed at the Quarter-Seſſions, on Proof by two Witneſſes or Preſentment by the Jury: And for the firſt Offence they forfeit the Goods, or the Value thereof, and are to ſuffer two Months Impriſonment without Bail: For the ſecond Offence double the Value of the Goods, and ſix Months Impriſonment: And for the third Offence the Offender loſeth all his Goods, muſt ſtand in the Pillory, and be impriſoned during the King's Pleaſure. 5 & 6 *Ed.* 6. *c.* 14.

Proſecution when.

The Proſecution muſt be within two Years after the Offence committed, and one Moiety of the Forfeiture goes to the King, the other to the Proſecutor, to be levied by *Fieri Facias* or *Capias* by the Juſtices.

Perſons excepted out of the Act Foreſtalling, &c.

Perſons buying Barley or Oats to make Malt or Oatmeal, Purveyors of any City or Town Corporate, &c. and Fiſhmongers, Innholders, Victuallers, Butchers, Poulterers, or People living within a Mile of the Sea, buying and ſelling Fiſh by Retail at reaſonable Rates, Badgers, Carriers, &c. licenſed by three Juſtices, are excepted.

Perſons tranſporting of Corn or Cattle, and Drovers allowed by Juſtices of Peace, and Things brought from beyond Sea, are excepted out of the Act of Foreſtalling, &c.

If one buys Corn, and Grinds it into Meal, and ſells it contrary to Law; this is within the Statute, becauſe the Converting it into Meal, is not an Alteration of the Corn; but if a Man buys Meal, and converts it into Starch, it has been held not to be within the Stat. becauſe it doth not remain the ſame, but is altered by a Trade. *C. Rep.* 134, 135.

Apples, Plums and Hops are not within the Stat. 2 *Cro.* 214, 114.

The Indictment ought to set forth, that the Things bought were sold again in the same Market, and thereby made dearer.

So if they buy *ea intentione ad revendend' contra formam Statuti*, 'tis punishable. *Cro. Car.* 381. 1 *Roll. Rep.* 11.

And the Indictment must be certain, and must not only say for ingrossing *magnam quantitatem straminis & fœni*, or *diversos cumulos tritici*, for it should be alledged how many Loads of Hay and Straw, and how many Bushels of Wheat, &c. *Cr. Car.* 381. *Roll. Rep.* 134.

Butchers not to sell live Cattle to one another.

By Stat. 13 of Q. *Eliz. c.* 25. the said Act of 5 & 6 of *Ed.* 6. is made perpetual, and by Stat. 22 & 23 *Car.* 2. *c.* 19. Butchers within the Cities of *London* and *Westminster*, or ten Miles thereof, are prohibited to buy fat Cattle, and sell the same to any other Butcher dead or alive; And also all Persons are restrained from buying fat Cattle in *Smithfield*, and selling the same there again. Which Act was revived in the 1st of K. *James* II. and afterwards continued by another Act 4 & 5 *W.* and *M. c.* 24. and by another in 11 & 12 of *W.* 3. *c.* 13. and further continued by an Act 5 of Queen *Anne*, *c.* 2. which was since explained by another of 7 of Q. *Anne*, *c.* 6. by which Butchers were allowed to sell to one another Calves, Sheep, or Lambs, notwithstanding the Laws formerly in Force against that Practice.

By 5 & 6 *Ed.* 6. *c.* 14. he who buys any Cattle, and sells the same again alive, within five Weeks, shall forfeit double the Value thereof.

To what Stat. of 5 & 6 Ed. 6. shall not extend.

By Stat. 13 *El. c.* 25. the Stat. of 5 & 6 *Ed.* 6. *c.* 14. shall not extend to Wines, Oils, Sugar, Spices, Currans, or other Foreign Victual brought from beyond Sea; Fish and Salt only excepted.

In an Indictment for Forestalling upon the Stat. of 5 & 6 *Ed.* 6. *c.* 14. you must lay that he was going to Market with the Goods. 1 *Roll. Rep.* 421.

By Stat. 21 *Ja.* 2. *c.* 22, the Stat. of 3 & 4 *Ed.* 6. *c.* 21. & 5 & 6 *Ed.* 6. *c.* 14. shall not extend to Freemen of *London*, buying Butter and Cheese. But if Justices shall declare in Sessions, that the Traders in Butter and Cheese shall forbear to buy, &c. if they do not, they shall not be exempted from the Penalties of those Laws.

No Person shall regrate, &c. Oak Bark, or Hides.

By 1 *Ja.* 1. *c.* 22. no Person shall regrate or ingross Oak Bark, with Intent to sell it again, on Pain to forfeit the same: And no Person shall forestall Hides coming to Market, &c. but in Market, or buy any

any except of him that killeth the Beast, to spend in his House, on Pain to forfeit 6 *s.* 8 *d.* for every Hide.

In the Indictment you must say, that he was going to the Market with the Goods. 1 *Roll. Rep.* 421.

Cases of Forestalling.

Salt is a Victual, and the buying and selling thereof is within the Stat. 5 & 6 *Ed.* 6. *c.* 14. For it is not only of Necessity of it self for the Food and Health of Man, but it seasoneth and maketh wholsom Beef, Pork, *&c.* Butter, Cheese, *&c.* and other Viands. 13 *El. Co.* 3. *Inst. ca.* 89. *p.* 195. *Cro. Car.* 231. *Rex.* ver. *Maynard.*

Apples are not within the Stat. of 5 & 6 *Ed.* 6. *c.* 14. Resolved upon a Writ of Error in the Exchequer Chamber. 6 *Ja.* 1. *Co. Lit.* 18. *Cro. Ja.* 114. *Rolle* was of Opinion, that Apples were not Victual within the Stat. 5 & 6 *Ed.* 6. *c.* 14. *Moore* 595.

Davis was indicted and convicted for ingrossing and selling Salmons: And the Indictment was removed into B. R. and it was remanded; for tho' the Fishmongers may buy to carry on their Trade, yet they must not sell at unreasonable Prices. *Roll. Rep.* 11. *Rex* ver. *Davis. Cro. Car.* 314. *Fenn's* Case. *W. Jones* 320.

An Information was preferred against one *Wray* for forestalling; he confessed the Fact, and prayed the Court to mitigate the Fine: And upon this the Court took this Difference, that if the Statute ascertains a Sum for the Delinquent to pay, and does not refer it to the Discretion of the Court, the Court cannot make any Mitigation; but otherwise, where the Statute doth not prescribe a certain Sum, but saith, it shall be the double Value or the like. And upon producing Precedents, and reading the Acts of 5 & 6 *Ed.* 6. *c.* 14. *Coke* seemed to incline that the Penalty might be mitigated, because the Forfeiture is double the Value. 1 *Roll. Rep.* 194. *Rex* ver. *Wray.*

H. was indicted upon 5 & 6. *Ed.* 6. *c.* 14. for forestalling of Lead; and because it did not appear by the Indictment, that he bought it as it was carrying to Market to be sold, as it ought to do, the Indictment was quash'd. 1 *Roll. Rep.* 421.

Information for ingrossing Butter and Cheese, sets forth the Quantity and Value of the Butter and Cheese, and prays the double Value, but does not say what the double Value amounted to, and good: For First, it is sufficient to demand the Value in general, without mentioning any Sum, and the Value is to be enquired by the Jury. 2dly, The Informer demanded by his Information the Moiety for himself, and said nothing of the King's Moiety, and well enough; for the Informer

is to have his Moiety firſt. *Paſch.* 3 *Car.* 1. *W. Jones* 156. *Bedoe* ver. *Alpe.*

It was ſaid by *Hobart* C. Juſtice, and *Winch* in *C. B.* that if a Man hath a Licenſe for foreſtalling, upon 5 & 6 *Ed.* 6. *c.* 14. he need but only recite that Stat. in his Pleadings, without the Pleading the 13 *El. c.* 25. for the Licenſe is grounded only on 5 & 6 *Ed.* 6. *c.* 14. and the 13 *El. c.* 25. only qualifies the Perſon. *Noy's Rep.* 27.

Indictment for conſpiring to raiſe the Price of Corn, and moved to quaſh it, becauſe it was without Addition of Place, but ſaid Millers in general, quaſh'd.

One indicted for foreſtalling Butter; Exception it does not appear to be at the Quarter Seſſions, but only at the General Seſſions; but held it ſhall be intended the Quarter-Seſſions. *Black.* 273.

An Indictment againſt Foreſtalling.

Eſſex, ſſ. JURR', &c. quod cum quidam A. B. de C. in Com' prēd' Gen' poſſeſſionat' fuit de viginti porcis ut de bonis & catallis ſuis proprijs & ſic poſſeſſionat' exiſten' quidam J. O. de H. prēd' in Com' prēd' Yeoman, quarto die Febr. Anno, &c. apud H. in Com' prēd' & diverſis aliis diebus prefat' A. B. obveniebat cum dictis viginti porcis * venien' erga mercat' de L. in Com' prēd' ibidem porcos prēd' vendend' & quod ipſe idem J. O. prefat' A. B. adtunc & ibidem extra Mercat' prēd' viginti porcos venien' mercat' prēd' emit & Forſtellavit per quod A. B. prēd' Porcos ad prēd' mercat' non addurit in contemptum Dom' Reg' nunc ac contra formam Statut' in hujuſmodi caſu edit' & Prohibis' ac contra Pacem dict' Dom' Reg' &c.

* If theſe Words are left out the Indictment is naught.

An Indictment againſt Regrators.

Eſſex, ſſ. JURR', &c. quod J. O. de H. in Com' prēd' Yeoman, 4 die Febr. Anno, &c. apud L. in Com' prēd' in quodam mercat' tunc ibidem tento quinquaginta Agnos pro decem libris bone & legalis monete emit regratavit obtinuit & nactus eſt in manus & poſſeſſion' ſuas de quodam E. D. qui prēd' quinquaginta Agnos ad eund' mercat' adtunc adduriſſet vendend' & quod immediate poſtea ſcil' dicto quarto die Febr. Anno ſuprādicto, idem J. O. in prēd' aperto mercat' prēd' quinquaginta Agnos cuidam T. S. pro duodecim libris ſimilis legalis Monete Anglie illicite vendidit contra formam Statut' in hujuſmodi caſu edit' & Prohibis & contra pacem, &c.

An

An Indictment againſt Ingroſſing Corn.

Eſſex, ſſ. JUR', &c. quod J. H. de H. in Com' prædo Yeoman, 4 die Februarii Anno, &c. apud B. & K. in Com' prædo emit & engroſſavit de J. A. & R. G. & aliis ligeis Dom' Reg' centum quarterias tritici & in domibus ſuis accumulavit & cuſtodivit ea intentione ad revendend' ad ſuum libitum per quod triticum in Mercatis & Villis Com' prædo' multipliciter carius & rarius fuit in grave dampnum ſubditorum dict' Dom' Reg' ac contra formam Statut' in hujusmodi caſu edit' & Provis ac contra Pacem, &c.

Fuel and Billets.

ALL Billets, of what Scantling or Denomination ſoever, ſhall contain in Length three Foot and four Inches, and be of the Dimenſions following, *viz.*

7 Ed. 6. c. 7.
43 Eliz. c. 14.
9 Ann. c. 15.
10 Ann. c. 6.

Names of Billets.	*Being round.*	*Half round.*	*Quarter Cleft.*	*How to be cut or marked.*
	In qr.	*In qr.*	*In qr.*	
A ſingle	72 1	0 0	0 0	No Notch.
A Caſt	10 1	12 2	12 0	One Notch.
A Trois	13 0	15 0	14 3	Three in the Middle.
2 Caſt	15 0	17 1	17 0	Two Notches.
3 Caſt	18 1	21 1	21 0	One at each End, and one in the Middle.
4 Caſt	21 1	24 2	24 0	Four
5 Caſt	23 3	27 2	27 0	Five
6 Caſt	26 0	30 0	29 2	Six
7 Caſt	28 0	32 2	32 0	Seven
8 Caſt	30 0	34 3	34 0	Eight
9 Caſt	31 3	36 3	36 1	Nine
10 Caſt	33 2	38 3	38 0	Ten
11 Caſt	35 1	0 0	0 0	Eleven
12 Caſt	36 3	0 0	0 0	Twelve
13 Caſt	38 1	0 0	0 0	Thirteen
14 Caſt	39 3	0 0	0 0	Fourteen
15 Caſt	41 0	0 0	0 0	Fifteen
16 Caſt	42 1	0 0	0 0	Sixteen
17 Caſt	43 3	0 0	0 0	Seventeen
18 Caſt	45 0	0 0	0 0	Eighteen
19 Caſt	46 1	0 0	0 0	Nineteen
20 Caſt	47 2	0 0	0 0	Twenty

Every Billet commonly called. Notches.

But 9 *Ann. c.* 15. extends not to Proprietors of Trees who make Billets for their own private Uſe only.

One Juſtice of Peace, Mayor, &c. on Information that Billet is not thus marked, may ſummon before him ſix ſufficient Men of the Place where the Billet is, and give them an Oath to enquire and preſent whether all or any Part of the Billet is of juſt and good Aſſize; and if they preſent on their Oath that 'tis not, then the Juſtice, &c. may ſeize it as forfeited, and deliver it to the Overſeers of the Poor of the Pariſh, to be diſtributed according to their Diſcretions.

If an Action is brought againſt the Juſtice, &c. he may plead the General Iſſue, and give the Act, and any ſpecial Matter in Evidence; and if he recover, ſhall have treble Coſts.

Acts not to extend to Billets of Beech-wood.

But by 10 *Ann. c.* 6. the Laws for Aſſizes of Fuel are not to extend to Billets made of Beech-wood; and no Perſon is to ſell Billets of Beech-wood by Retail in *London*, *Weſtminſter*, or Bills of Mortality, unleſs aſſized, cut or marked according to the Uſage of making Beech, Billet, before the Act of 9 *Ann. c.* 15. or by Weight of the ſaid Billet, if the Buyers require it.

Game.

Ayeries.

AYERY is the proper Term for a Hawk's Neſt.

Every Freeman may have his Ayeries of Hawks, Eagles, and Herons in his own Wood, though within a Foreſt. *Ch. For. c.* 21.

If one have Goſs-hawk, and they make their Ayeries on his Land, he hath a poſſeſſory Property in them, and if another takes them before they can fly, the Owner of the Soil may have his Action of Treſpaſs. 7 *Co.* 17.

Black Game.

For the better preſerving the red and black Game of Grouſe, &c. no Perſon ſhall, between the ſecond of *February*, and the 24th of *June*, burn any Ling, Heath, Furze, Gorſe, or Fern, on Hills, Heaths, Moors, or other Waſtes, on Pain of being committed to the Houſe of Correction, for any Time not above a Month, nor under ten Days. 4 & 5 *W.* & *M. c.* 23.

And

And Juſtices of Peace, Lords of Manors, &c. may take away any Hare, &c. from Chapmen, &c. or any other Perſon not qualified to kill the ſame as are found in their Poſſeſſion. *Ibidem.*

If any Perſon enter wrongfully into the Ground kept for breeding Conies, though the ſame be or be not encloſed; and chaſe, take or kill any Conies without the Owner's Conſent, he ſhall pay treble Damages and Coſts, ſuffer three Months Impriſonment, and at his Diſcharge find Sureties for his good Behaviour; the Proſecution to be in a Month, and the Conviction by Confeſſion or Oath of one Witneſs. *Stat.* 1 *Jac.* 1. *c.* 13. & 22 & 23 *Car.* 2. *c.* 25. Conies.

If in the Night-time any Perſon ſhall kill Conies upon the Borders of Warrens, or any other Grounds made uſe of for keeping Conies, except Owners: And thoſe who uſe Snares, Hare-pipes, or other Engines, ſhall pay ſuch Sum to the Overſeers of the Poor, not exceeding 10 *s.* as the Juſtice ſhall appoint; and in Default of Payment, be committed to the Houſe of Correction. *Ibidem.*

May appeal to the Seſſions, whoſe Judgment is final. A Commoner who hath only Right of Common, may kill Conies upon his Common; for as they are *feræ naturæ* when they are out of the Warren, the Lord can have no Property in them 'till taken; and therefore the Commoner may kill them. 4 *Leon.* 7. 2 *Cro.* 195. *Cro. Car.* 388.

In Convictions for keeping Guns to deſtroy Game, it has been adjudged the Juſtices of Peace have no Juriſdiction; but an Indictment will lie againſt the Offender before Juſtices of *Oyer* and *Terminer*, &c. 4 *Mod. Rep.* 49. Conviction.

But by Stat. 22 & 23 *Car.* 2. *c.* 25. Juſtices of Peace upon Examination and Conviction of the Offence may commit a Perſon keeping Guns not being qualified 'till he hath paid the Forfeiture incurr'd.

If any Perſon not qualified by Law, ſhall keep or uſe any Greyhounds, ſetting Dogs, Lurchers, Pointers, &c. to kill or deſtroy Game, and thereof be convicted on Oath of one or more credible Witneſſes, he ſhall forfeit 5 *l.* to be levied by Diſtreſs or Sale of Goods, and for want of Diſtreſs, be ſent to the Houſe of Correction for three Months. 5 *Ann. c.* 14. Dogs.

Juſtices of Peace, Lords of Manors, and their Gamekeepers, &c. may take away ſuch Dogs from Perſons not qualified to keep the ſame.

A Man

A Man may have a Property in a Dog, and in an Action of Treſpaſs for taking of a Blood-hound, 10 *l.* Damage was recovered, *Cro. Eliz.* 125, 126. Trover and Converſion lies for a Spaniel Dog, and Treſpaſs for a Grey-hound. *Hob.* 363. *Cro. Jac.* 463. and Action on the Caſe lies on a Promiſe to deliver a Lurcher ſold. 1 *Keeble* 680.

Eggs. None ſhall take the Eggs of any wild Fowl (uſually eaten) from the Neſt, or deſtroy them between the firſt of *March*, and the laſt of *June*, on Pain of a Year's Impriſonment; and a Forfeiture for every Buſtard's Egg 1 *s.* 8 *d.* of every Bittern, Heron or Shovelard 8 *d.* of a Mallard, Teal, or other wild Fowl 1 *d.* 25 *Hen.* 8. *cap.* 11. to be divided between the King and Proſecutor; and Juſtices may enquire, hear, and determine theſe Offences as in Caſes of Treſpaſs. 25 *Hen.* 8. *cap.* 11.

Deſtroyers of Eggs of Pheaſant, Partridge, *&c.* are to be impriſoned three Months, unleſs they pay to Church-wardens for the Uſe of the Poor the Sum of 20 *s.* 1 *Jac.* 1. *c.* 17.

Falcons, Hawks, &c. No Perſon ſhall take out of the Neſt any Eggs of a Falcon, Goſs-Hawk, *&c.* under Pain of a Year's and Day's Impriſonment, and Fine at the King's Pleaſure. 11 *H.* 7. *c.* 17.

The felonious Taking any Hawk from the Perch, *&c.* or from any Man's Perſon, was Robbery at Common Law; and by Statute 37 *Ed.* 3. *c.* 19. If any Man find a Falcon, Lanner, Lanneret, *&c.* or ſteal and carry away the ſame, and not forthwith bring it to the Sheriffs of the County to be proclaimed, it is made Felony; but the Offender ſhall have his Clergy; but this Stat. extends only to long winged Hawks, and not to Goſs-hawks or Sparrow-hawks. *Co.* 3. *Inſt.* 97, 98.

If any take away Falcons, Goſs-hawks, *&c.* from the Coverts where they uſe to breed, they forfeit 10 *l.* to be divided between the King and the Proſecutor. *Stat.* 11 *H.* 7. *c.* 17.

Game-keepers. By 22 & 23 *Car.* 2. *c.* 25. Lords of Manors, and other Royalties may by Writing under Hand and Seal, authorize one or more Game-keepers who have Power to ſeize Guns, Dogs, Hays, Nets, Snares, *&c.* or other Engines for killing or deſtroying Game uſed by Perſons prohibited by Law to do the ſame.

And by Stat. 5 *Ann.* *c.* 14. any Lord or Lady of a Lordſhip or Manor, may by Writing under his or her Hand and Seal, impower Game-keepers within their reſpective Lordſhips to kill Hare, Pheaſants, Partridge,

&c.

&c. but ſuch Game-keepers are not to kill Game, and afterwards ſell and diſpoſe thereof without the Knowledge and Conſent of the Lord or Lady of ſuch Manor, on Pain of Commitment to the Houſe of Correction for three Months. 5 *Ann. c.* 14.

By Stat. 9 *Ann. c.* 25. All Game-keepers are to be entred with a Clerk of the Peace in the Seſſions; and if any Game-keeper, beſides what is licenſed, and his Name entred with the Clerk of the Peace, whereof a Certificate is to be made, ſhall kill any Hare, &c. he ſhall incur the Penalty of 5 *l.*

And by Stat. 3 *Geo.* 1. *c.* 11. All Game-keepers are to be Perſons qualified by Law to kill the Game, or to be truly and properly Servants to Lords of Manors, and not Tenants, &c. under the Penalties of 5 *Ann. c.* 14. and there muſt not be above one Game-keeper appointed within any one Manor to kill Game, &c.

If any Higler, Chapman, Inn-keeper, Victualler or Alehouſe-keeper, ſhall have in his or their Cuſtody any Hare, Pheaſant, Partridge, &c. or ſhall buy, ſell, or offer to ſale any ſuch, every ſuch Higler, &c. upon Conviction by View, or Oath of one or more Witneſſes before one Juſtice, ſhall forfeit 5 *l.* for every Hare, &c. Half to the Informer, the other Half to the Poor, to be levied by Diſtreſs and Sale of Goods, and for want of Diſtreſs, the Offender is to be committed to the Houſe of Correction for three Months for the firſt Offence; and for every other Offence four Months, without Bail, 5 *Ann. c.* 14. The Proſecution muſt be within three Months. Hares.

Perſons not qualified killing or ſelling, or expoſing to Sale any Hare, Pheaſant, &c. are liable to the Forfeiture of 5 *l.* for every Hare, &c. And if Hare, Pheaſant, &c. ſhall be found in the Shop, Houſe, or Poſſeſſion of any Perſon not qualified to kill the ſame, or not intitled thereto, under ſome Perſon ſo qualified, the ſame ſhall be adjudged Expoſing it to Sale. 9 *Ann. c.* 25.

Any Perſon that ſhall kill or deſtroy, ſell or buy any Hare, Pheaſant, Partridge, &c. and ſhall within three Months diſcover Higlers, Chapmen, &c. who have bought or ſold, or had in Poſſeſſion any Hare, &c. ſo as they ſhall be convicted thereof, ſhall be diſcharged of the Penalties, and receive the ſame Benefit as any other Informer. 5 *Ann. c.* 14.

If a Conſtable by a Juſtice of Peace his Warrant, find any Hare in the Houſe of a Perſon not qualified, he

he must carry him before a Justice of Peace; and if he do not give a good Account how he came by it, he shall be liable to the Penalty of this Act; but this is only a Sum not exceeding 20 *s.* nor under 5 *s.* 4 & 5 *W. & M. c.* 23.

Tracing, killing, or destroying Hares in the Snow, incurs a Forfeiture of 6 *s.* 8 *d.* for every Hare, by Stat. 14 & 15 *H.* 8. *c.* 10. and that is enquirable in the Sessions and Court-Leet.

Heath Game, Herons.

Moor, Heath Game and Grouse, are within the Stat. of 5 *Ann. c.* 14. and Offenders are liable to the like Penalty of 5 *l.* for killing them as for other Game.

Destroying of Herons incurs a Penalty of 20 *s.* by Stat. 1 *Jac.* 1. *c.* 17. and by Stat. 19 *H.* 7. *c.* 11. none shall take an old Heron out of his Ground (unless it be with Hawking, *&c.*) under the Penalty of 6 *s.* 8 *d.* nor a young one out of the Nest, on Pain of 10 *s.* Forfeiture.

Persons licensed in Sessions to shoot in Birding-Pieces, are not to shoot within 600 Paces of a Heronry, *&c.* 7 *Jac. c.* 11.

Hunting.

Any Man may hawk and hunt at his Pleasure in his own Lands, that is not the free Warren of another Person; and so also for other Recreations. 11 *Co.* 87.

If any Person hawk or hunt with Spaniels in standing Corn, except in his own Ground, or with the Consent of the Owner, he shall forfeit forty Shillings to the Owner of the Ground, by Stat. 23 *Eliz. c.* 10.

If any inferiour Tradesman, Apprentice, *&c.* shall hunt, hawk, fish, or fowl (unless in Company of the Master qualified by Law, they are liable to pay a Sum not under 5 *s.* nor above 20 *s.* for every Hare, Partridge, *&c.* killed, and to be sued as Trespassers for coming upon the Ground, wherein the Plaintiff shall recover his Damages and Costs. 4 & 5 *W. & M. cap.* 23.

Tho' the Common Law justifies the Hunting of Foxes, Badgers, Otters, and other ravenous Beasts of Prey in the Ground of another Person; yet a Man cannot dig to unearth them without License; for if he does he is a Trespasser. *Rol. Abridg.* 558.

If a Man in Hunting starts a Hare upon his own Land, he may pursue it on the Ground of another, and the Hare is still his own Property from its Being at first on his own Lands, the Property of Hares being in them, on whose Ground they remain: But if one starts

ſtarts a Hare upon another Man's Ground, and hunt and kill it, he is ſubject to an Action, tho' it is but ſeldom brought. *Cro. Car.* 553.

An Action was brought againſt a Perſon for entring another Man's Warren; the Defendant pleaded, that there was a Pheaſant on his Land, and his Hawk purſued it into the Plaintiff's Ground; and it was reſolved that this doth not amount to a ſufficient Juſtification; for in this Caſe, he can only follow his Hawk, and not take his Game. 28 *Ed.* 3. *Poph.* 162.

A Man may juſtify killing the Dogs of Treſpaſſers, hunting upon his Ground. 2 *Cro.* 44. *Wadhurſt* verſ. *Damme*, 3 *Leon.* 28. But *Rol. Abridg.* 567. *contra*, *Lewis*'s Caſe.

Deſtroyers of the Game may be indicted in the Seſſions, and there puniſhed, tho' moſt Penalties on late Statutes are levied on Conviction by one Juſtice. Indictments.

A Man was indicted for ſhooting of Game without ſetting forth that he was not qualified ſo to do: It was ordered by the Court, that he ſhould ſhew himſelf to be qualified, to diſcharge himſelf. 2 *Keeb.* 582.

There are Licenſes of Pleaſure, and Licenſes of Profit; a Licenſe for Pleaſure is to hunt or hawk, &c. in a Foreſt, Chaſe, &c. whereby a Man doth not gain any Property in the Game he takes; and he cannot hawk or hunt with any more in Company than himſelf. A Licenſe for Profit is where a Man has a Warrant to kill and carry away Game, and then he may hunt with more Company. Licenſes.

Nets, Hays, Snares, Engines, &c. for deſtroying Game, may be ſeized by Game-keepers. 22 & 23 *Car.* 2. *c.* 25. And Conſtables having a Warrant of two Juſtices, may ſearch Houſes for Nets, Dogs, &c. and the ſame take, carry away, and deſtroy as Things prohibited. 7 *Jac.* 1. *cap.* 11. Nets.

Indictment for not aiding a Conſtable upon Demand, to ſearch by Warrant for Nets, quaſh'd, for a Conſtable has not that Power in that Buſineſs. *Black.* 86, 87.

And Perſons of mean Condition, convicted by Confeſſion or Oath of one Witneſs, before two or more Juſtices, of taking or deſtroying Game with Nets, Dogs, &c. are to be committed to Gaol for three Months without Bail, unleſs they pay 20 Shillings for every Bird, &c. to the Uſe of the Poor. 7 *Jac.* 1. *c.* 11.

If any Perſon not qualified, ſhall keep or uſe any Nets, Tunnels, Hare-pipes, Snares, or other Inſtruments to deſtroy the Game, he ſhall forfeit a Sum not exceeding 20 *s.* nor under 5 *s.* for every Hare, Par-

tridge, &c. taken by Stat. 4 & 5 *W. & M. c.* 23. But by Stat. 5 *Ann.* the Penalty is 5 *l.* leviable by Diſtreſs, &c.

Pheaſants and Partridges.

None ſhall take Pheaſants and Partridges with Engines in another Man's Ground without Licence, under the Penalty of 10 *l. Stat.* 11 *H.* 7. *c.* 17.

And by Stat. 23 *Eliz. c.* 10. No Perſon ſhall kill or take Pheaſant or Partridge, with Net or Engine in the Night-time, on Pain of forfeiting 20 *s.* for every Pheaſant, and 10 *s.* for every Partridge; and if not paid in ten Days, one Month's Impriſonment, &c. the Forfeiture to be recovered in any Court of Record, and divided between the Lord of the Manor, and the Proſecutor.

The Killers or Takers of any Pheaſant, Partridge, &c. convicted by Confeſſion, or Oath of two Witneſſes before two Juſtices, ſhall be impriſoned three Months, unleſs they pay to the Uſe of the Poor 20 *s.* for every Fowl, &c. taken or deſtroyed. 1 *Jac.* 1. *c.* 27.

If any deſtroy any Pheaſant or Partridge between the firſt of *July* and the laſt of *Auguſt*, he forfeits 40 *s.* to the Poor, or muſt ſuffer one Month's Impriſonment for every Time of Hawking, &c. and 20 *s.* for every Pheaſant and Partridge killed. 7 *Jac.* 1. *c.* 11.

Indictment on Stat. 23 *Eliz. c.* 10. for taking Partridges *cum retiis*, and quaſh'd, becauſe there is no ſuch Word as *retiis*, it ſhould be *retibus*. Proceedings may be upon this Statute at the Seſſions by Way of Indictment, or before a Juſtice by Examination of Witneſſes; but the Juſtice can only take the Examination of the Witneſſes, and bind over to the next Seſſions. 3 *Bulſt.* 178. *Rex* verſ. *Rivet.*

Perſons having Pheaſant, Partridge, &c. in their Poſſeſſion, and not giving a good Account how they came by the ſame, &c. ſhall forfeit a Sum not exceeding 20 *s.* nor leſs than 5 *s.* for every Pheaſant or Partridge, to be levied by Diſtreſs, and in Default be committed to the Houſe of Correction for a Month. 4 & 5 *W. & M. c.* 23.

Pidgeons.

But Stat. 5 *Ann. c.* 14. increaſes the Penalty to 5 *l.* for every Pheaſant, &c. and three Months Impriſonment on Non-payment, Conviction before one Juſtice.

By Stat. 7 *Jac.* 1. *c.* 11. Perſons are not to fire at Game within 100 Paces of a Pidgeon-houſe; and a Forfeiture is inflicted for killing of Pidgeons, *viz.* 20 *s.* for every Pidgeon killed for the Uſe of the Poor, or the Offender is to be committed for three Months; but after he hath been committed one Month, he may be diſ-

diſcharged on becoming bound before two Juſtices, with two Sureties in 20 *l.* with Condition not to commit the like Offence.

Qualification to keep Dogs, Guns, &c.

The Qualifications to keep Grey-hounds, ſetting Dogs, *&c.* to take Game, by Stat. 1 *Ja.* 1. *c.* 27. is an Inheritance of 10 *l. per Annum*, Leaſe for Life of 30 *l. per Annum*, or 200 *l.* perſonal Eſtate.

But by Stat. 22 & 23 *Car.* 2. *c.* 25. the Qualification to keep Guns, Dogs, *&c.* is 100 *l. per An.* of Inheritance, or for Life, in a Man's own, or his Wife's Right, or a Leaſe for 99 Years of 150 *l. per Annum*, and thoſe who have a free Warren, Lords of Manors, and the Son and Heir of an Eſquire, or other Perſon of higher Degree, are qualified to keep Guns, Grey-hounds, *&c.* Perſons not qualified, keeping Guns, are liable to a Penalty of 10 *l.* Stat. 33 *H.* 8. *c.* 6. 22 & 23 *Car.* 2. *c.* 25.

And Perſons qualified to keep Guns, may take away Guns from thoſe that are not, and break them. *Ibidem.*

Search for Game.

Game-keepers, and others by Warrant from a Juſtice of Peace, may ſearch the Houſes of Perſons not qualified, ſuſpected to keep Guns, *&c.* and ſeize them for the Uſe of the Lord of the Manor, or otherwiſe Deſtroy them. 22 & 23 *Ch.* 2. *c.* 25.

Shooting.

If any Perſon (unqualified) ſhall ſhoot at any Pheaſant, Partridge, Grouſe, Heathcock, Duck, *&c.* and thereof ſhall be convicted by two Witneſſes, or by Confeſſion before two Juſtices, he ſhall be committed for three Months, or pay 20 *s.* for every Fowl. 7 *Ja.* 1. *c.* 11.

Soldiers.

If any Officer or Soldier without Leave, ſhall take or deſtroy any Hare, Pheaſant, Partridge, or any ſort of Fowl, Poultry, *&c.* he ſhall on Conviction forfeit, if an Officer, 5 *l.* and if a Soldier, 20 *s.* to be paid by the Officer, commanding in chief, and diſtributed to the Poor; and for Default of Payment within two Days after Conviction thereof, upon Oath before a Juſtice of Peace, and Demand made by a Conſtable, *&c.* ſuch Officer ſhall loſe his Commiſſion. Stat. 10 *Geo.* *c.* 3.

Swans.

One may preſcribe to have Game of Swans within his Manor, as well as a Warren or Park, and none may have a Swan-mark, unleſs it be by Grant of the King, or his Officers authorized, or by Preſcription. 22 *Ed.* 4. *c.* 6.

He who ſteals Swans Eggs out of their Neſts, ſhall ſuffer a Year's Impriſonment, and be fined. 11 *H.* 7. And where there are Swans marked and pinioned or unmarked,

unmarked, if kept in a private River, it is Felony to take them: As it is likewiſe to ſteal Partridges, Pheaſants, &c. reduced to Tameneſs, knowing them to be tame. *H. P. C.* 68. *Crompt. Juriſ.* 167.

Wild-Fowl.

If any Perſon, between the firſt of *July* and the firſt of *September*, ſhall drive and take any Wild duck, Teal, Widgeon, or any other Water-fowl, by Hays, Tunnels, or other Nets in any Fens, Marſhes, or other Places of Reſort for Wild-fowl in the molting Seaſon, and be proved by the Oath of one Witneſs before one Juſtice, he ſhall forfeit 5 *s.* for every ſuch Wild-Duck, &c. one Moiety to the Informer, and the other to the Poor, to be levied by Diſtreſs and Sale, and for want of Diſtreſs to be committed to the Houſe of Correction for any Time, not exceeding one Month, nor leſs than 14 Days, there to whipped, and kept at hard Labour. Stat. 9 *Ann. c.* 25.

Perſons ſhooting Duck, Mallard, Teal, &c. are liable to a Penalty of 20 *s.* for every Duck, &c. 7 *Ja.* 1. *c.* 11. *Vid. ante* Shooting.

By Stat. 4 & 5. *W.* & *M. c.* 5. 'tis enacted, that in Convictions for killing Game, &c. no *Certiorari* is to be allowed, unleſs the Party convicted ſhall be bound to the Proſecutor in the Sum of 50 *l.* with ſuc[illegible] Sureties as the Juſtice before whom he was convicted ſhall think fit, conditioned to pay the Proſecutor full Coſts, to be aſcertained upon Oath within 14 Days after the Conviction, or a *Procedendo* allowed.

Penalties recoverable by Action, as well as before Juſtices.

By Stat. 8 *Geo. c.* 19. It ſhall be lawful againſt any Perſon liable to a Penalty on Conviction, before a Juſtice of Peace for any Offence committed againſt any Law, for the better Preſervation of the Game, to proceed to recover the ſaid Penalty, either by Information and Conviction before a Juſtice of Peace, or to ſue for the ſame by Action of Debt in any Court of Record; and the Plaintiff to have double Coſts.

But the Suits and Actions to be brought, are to be commenced before the End of the next Term after the Offence committed, and there muſt not be a double or ſecond Proſecution, one on this Law, and another on the Laws already in Being.

Any Perſon proſecuted for putting Stat. 4. & 5 *W.* & *M. c.* 5. in Execution, may plead the general Iſſue, and give the ſpecial Matter in Evidence.

And if the Verdict paſs for the Defendant, or the Plaintiff become Non-ſuit or diſcontinue his Suit, Defendant ſhall have treble Coſts.

The Defendant was convicted upon the Stat. 5 *Ann.* c. 14. for keeping a Greyhound and killing four Hares not being qualified; but it was by his own Confeſſion, and not upon the Oath of one credible Witneſs, as that Stat. Directs: It was objected, that the Juſtice of Peace having no Power in this Caſe, but what he derives from the Statute; therefore it ought to be purſued, eſpecially where 'tis Penal: But adjudg'd, that the Confeſſion of the Offender is within the Intention, tho' not within the Letter of the Act; and 'tis the ſtrongeſt Evidence againſt the Perſon confeſſing; therefore when a Juſtice convicts upon a ſtronger Evidence than is requir'd by the Statute, ſuch Conviction muſt be good. *Hill.* 9 *G.* 1. *B. R.* The *King* ver. *Gage.* Confeſſion of the Party the ſtrongeſt Evidence, &c.

It was held *per Cur.* that a Game-Keeper cannot take away a Gun from an unqualified Perſon by the Statute, without a Warrant from a Juſtice of Peace. *Cumberbach* 183. *Carpenter* ver. *Adams.*

A Warrant or Deputation from a Lord of a Manor to a Game-keeper.

TO all People, to whom theſe Preſents ſhall come, J. T. C. *of,* &c. *Eſq; Lord of the Manor, of,* &c. (*by Virtue of ſeveral Acts of Parliament lately made for the Preſervation of Game*) *have nominated, authorized, and appointed, and by theſe Preſents do nominate,* &c. A. C. *of,* &c. *to be my Game-keeper, of, and within my Manors of,* &c. *in the County of,* &c. *aforeſaid, with full Power and Authority according to the Direction of the Statutes in that Caſe made and provided to kill Game for my Uſe, and to take and ſeize all ſuch Guns, Greyhounds, ſetting Dogs,* &c. *Ferrets, Trammels, Hays, or other Nets, Snares, or Engines for taking, killing, or deſtroying of Hares, Pheaſants, Partridges, or other Game, as within the ſaid Manors of,* &c. *and the Precincts thereof ſhall be kept or uſed by any Perſon or Perſons not legally qualified to do the ſame: And further to act and do all, and every Thing and Things which belongeth to the Office of a Game-keeper; according to the Direction of the ſaid Acts of Parliament, for which this ſhall be his ſufficient Warrant.* Given, &c. 22 & 23 c. 2. c. 25. 5 Ann. c. 14.

Theſe Warrants are to be entered with the Clerk of the Peace. 9 *Annæ. c.* 25.

A Warrant upon the Statute of 4 & 5 *W. & M. c.* 5. to enter into the Houſes, &c. of ſuſpected Perſons, and ſearch for Hare, Partridge, Pheaſant, Fiſh, Fowl, or other Game, and to apprehend, and bring the Offender before the next Juſtice, to be examined thereupon, and proceeded againſt according to Law.

4 & 5 W. & M. c. 5.
One or more Juſtices.

Eſſex. ſſ. *FOraſmuch as Complaint hath been made unto me this preſent Day, That the Game in His Majeſty's Foreſt of* Waltham, *hath been very much of late deſtroyed by many idle Perſons of your Pariſh, contrary to the Form of the Statute in that Caſe made and provided: Theſe are therefore in His Majeſty's Name, ſtrictly to charge and command you, and every of you, That you, ſome or one of you do forthwith, upon Sight hereof, enter into and ſearch the Houſes, Out-houſes, Yards, and other Places belonging to the Houſes within your ſaid Pariſh, of all and every Perſon and Perſons whom you ſhall ſuſpect, or be informed to have any Hare, Partridge, Pheaſant, Fiſh, Fowl, or other Game, and whereſoever you ſhall find any ſuch, to apprehend, or cauſe to be apprehended, all and every Perſon or Perſons ſuſpected to have unlawfully come by the ſame, and them, and every of 'em, as alſo thoſe in whoſe Houſes or Places belonging to them any ſuch Hare, Partridge, Pheaſant, Pidgeon, Fiſh, Fowl, or other Game, ſhall be found, to bring before me, or ſome other of his Majeſty's Juſtices of the Peace for this County, to anſwer all and ſingular the Premiſes and Matters aforeſaid, and farther to be proceeded againſt according to Law, whereof,* &c.

An Information againſt a Perſon for ſelling of Game, &c.

The Information of *C. D.* &c. taken, &c.

5 Annæ c. 14.

THIS Informant ſaith, That on, &c. *laſt paſt, he ſaw* G. D. *of,* &c. *at his Houſe ſituate,* &c. *ſell and diſpoſe of one Hare, to,* &c. *for,* &c. *or ſaw him with Greyhounds, kill and deſtroy one Hare,* &c. *in a Ground called,* &c. *ſituate,* &c.

A

A Warrant againſt a Chapman, Higler, &c. for having in his Poſſeſſion, or any other Perſon ſelling, or unlawfully killing Hares, Pheaſants, &c.

WHereas C. D. *of* &c. *hath this Day made Oath before me, That on,* &c. *laſt, he ſaw in the Poſſeſſion of* G. D. *at his Houſe ſituate in,* &c. *one Hare or one Partridge,* &c. *or offer to ſell one Hare,* &c. *or ſaw him with Greyhounds, kill and deſtroy one Hare in the Ground called,* &c. *in the Pariſh of,* &c. *not being legally qualified to do the ſame, and contrary to an Act of Parliament in that Caſe made, whereby he hath forfeited the Sum of* 5 l. *Theſe are therefore in His Majeſty's Name, to Command you forthwith to levy the ſaid Sum of* 5 l. *by Diſtreſs and Sale of Goods of the ſaid* G. D. *ſo forfeited as aforeſaid, and that you do pay one Moiety thereof to the ſaid* C. D. *and the other Moiety to the Church-wardens or Overſeers of the Poor of the ſaid Pariſh of,* &c. *where the Offence was committed, for the Uſe of the ſaid Poor according to the Direction of the Act of Parliament, and for want of ſuch Diſtreſs, that you do convey the ſaid* G. D. *to the Houſe of Correction, there to remain for the Space of three Months.* Given, &c. 5 Annæ c. 14.

The like Warrant *mutatis mutandis* for buying, ſelling, or offering to Sale an Hare, Partridge or Pheaſant, or for keeping or uſing any Greyhound, ſetting Dog, Hay, Tunnel, &c. or other Engine not being qualified by Law to keep it.

A Warrant to levy the Forfeiture, againſt a Perſon for keeping Greyhounds, ſetting Dogs, &c. not being qualified.

WHereas *it has been duly proved before me, That* C. D. *of your Pariſh hath for ſome Time laſt paſt, kept and made uſe of two Greyhounds or ſetting Dogs,* &c. *for the killing and deſtroying of Game without having any viſible Eſtate, or other legal Qualification for doing the ſame contrary to an Act of Parliament in that Caſe made: Theſe are therefore to Command you to levy the Sum of* 5 l. (*which he hath forfeited by the Offence aforeſaid*) *on the Goods of the ſaid* C. D. *by Diſtreſs and Sale thereof, rendring to him the Overplus, if any, and that you do diſtribute and diſpoſe of* 5 Annæ c. 14.

the ſaid Forfeiture as followeth; one Half thereof to G. D. *of*, &c. *as Informer, and the other Half Part thereof for the Uſe of the Poor of the ſaid Pariſh of*, &c. Given, *&c.*

A Warrant againſt a Perſon for hunting with Spaniels in ſtanding Corn.

23 Eliz. c. 10.

WHereas Complaint hath been made unto me by C. D. *and* E. F. *of*, &c. *Gent. That* A. B. *of their Pariſh, did on*, &c. *laſt paſt, hunt with Spaniels in the Ground of the ſaid* C. D. *called*, &c. *ſituate*, &c. *wherein there was then Corn ſtanding and growing, without his Conſent, to the great Damage of the ſaid* C. D. *and contrary to Law: Theſe are therefore in His Majeſty's Name to Command you to bring the ſaid* A. B. *before me or ſome other of His Majeſty's Juſtices of the Peace for this County, to be examined concerning the Premiſſes, or to give Bond with Sureties for his Appearance at the next general Quarter-Seſſions of the Peace to be holden for the County aforeſaid; and if he ſhall refuſe ſo to do, That then you do ſafely convey him to the Gaol of*, &c. *and deliver him to the Keeper thereof, commanding you the ſaid Keeper, to receive the ſaid* A. B. *into your Cuſtody, and him ſafely to keep, until he ſhall find Sureties as aforeſaid.* Given, *&c.*

A Bond of Fifty Pounds, to be entred into by the Offender to the Proſecutor after Conviction, upon the Statute of 4 & 5 *W. & M. c.* 5. for Preſervation of the Game, upon Condition to pay to the Proſecutor (in Caſe of Removal of the Conviction by *Certiorari*) his full Coſts, within a Month after ſuch Conviction ſo removed, ſhall be confirmed, or a *Procedendo* thereupon awarded.

NOverint Univerſi per Preſentes nos C. T. de Parochia Sancti Johannis apud Hackney, in Comitatu Middleſexiæ Cyrothecarium D. P. de eiſdem Parochia & Comitatu Fabrum Lignarium, & J. K. de eisdem Parochia & Comitatu Fabrum Ferrarium teneri & firmiter obligari S. M. de eisdem Parochia & Comitatu Agricole in quinquaginta Libris bone, &c.

WHereas the above-bound C. T. *was lately convicted before* C. D. *Eſq; one of His Majeſty's Juſtices of the Peace for the County of* Middleſex *above-written, at the*

the Proſecution of the above-named S. M. *of keeping and uſing Greyhounds, Setting-Dogs, Coney-Dogs, Lurchers, Ferrets, Croſs-bows, Hays, Nets, Tunnels, Low-bells, Hare-Pipes, Quail-Pipes, Snares, and other Engines and Inſtruments for the Deſtruction of the Game of this Kingdom, not being thereunto qualified by the Laws of this Realm: And whereas the ſaid* C. T. *hath ſince by His Majeſty's Writ of* Certiorari *removed the ſaid Conviction, and the Proceedings thereupon into His Majeſty's Court of King's Bench: The Condition therefore of the Obligation above-written is ſuch, That if the ſaid* C. T. *do, and ſhall (according to the true Intent and Meaning of the Statute in that Caſe made and provided) well and truly pay or cauſe to be paid unto the aforeſaid* S. M. *his full Coſts and Damages, to be aſcertained upon the Oath of the ſaid* S. M. *which he ſhall ſuſtain, or be at in any wiſe, touching or concerning the ſaid Proſecution of the ſaid Conviction, or in making his Defence upon the Removal thereof within one Month next after the ſaid Conviction ſhall be confirmed, or His Majeſty's Writ of* Procedendo *ſhall be awarded by the ſaid Court of King's Bench thereupon; that then the Obligation above-written to be void and of no Effect, or elſe to ſtand and be in full Force and Virtue.*

4 & 5 W. & M. cap. 5.

Gaming.

THO' Gaming be not unlawful in itſelf, yet it is ſo, as prohibited by ſeveral Statutes, to certain Perſons, and to be uſed in certain Places. 2 *Vent.* 175.

One Juſtice may enter Gaming-houſe, and commit Gameſters, &c.

Every Juſtice of Peace may as well within Liberties, as without, enter into any common Houſe or Place where any playing at Cards, Dice, Tables, or other Games prohibited by Law, ſhall be ſuſpected to be uſed, and may as well arreſt the Keepers of ſuch Place, as the Players there, and impriſon them till they find Sureties not to play any more, *&c.* 33 H. 8. *c.* 9.

And Mayors, Sheriffs, Conſtables, *&c.* not ſearching Places ſuſpected of unlawful Gaming, are ſubject to a Penalty of 40*s.* and the Statute againſt uſing unlawful Games is to be proclaimed by Juſtices every Quarter-Seſſions in open Court, and four Times a Year in the Market-Place. *Ibidem.*

It is an Article of Enquiry at Seſſions, if any one keeps any Place for unlawful Games, and *Anno* 29 *Eliz.* ſeveral Perſons were taken at a Gaming houſe in *Staffordſhire*, by one of the Juſtices of Peace of that County,

County, and were indicted thereof, and he that kept the Houſe was fined 5*l.* and every one that played, 20*s.* and they were committed to Gaol till they paid their Fines.

Perſons Gaming may be committed.

H. was convicted of keeping a Cock-pit ſix Days, the Court agreed it an unlawful Game within Stat. 33 *H.* 8. *c.* 9. and took their Meaſures for his Fine at 40*s.* a Day, tho' the Indictment was at Common Law, and fined him 12*l.* *Trin.* 27. *Car.* 2. *B. R.* 3 *Keeble* 510. *Rex.* v. *Howel.*

One Juſtice may alſo commit Perſons playing in ſuch Houſes, until they find Sureties not to play any more, and they forfeit 6*s.* 8*d.* for every Offence, and Artificers, Apprentices, &c. uſing Plays out of *Chriſtmas*, are liable to a Penalty of 20*s.* 33 *H.* 8. *c.* 9.

And now by Stat. 2 *G.* 2. where it ſhall be proved on Oath by two or more Witneſſes, before any Juſtice, as well as where he ſhall find on his own View, that any Perſon hath uſed unlawful Games, contrary to the Stat. of 33 *H.* 8. *c.* 9. the Juſtice ſhall have Power to commit ſuch Offender to Priſon without Bail, till he ſhall enter into Recognizance, with Sureties or without, at the Juſtice's Diſcretion, that he ſhall not any more play at ſuch unlawful Game.

Liable to pay treble the Value.

By 16 *Car.* 2. *c.* 7, If any Perſon ſhall by Fraud in playing at Cards, Dice, Tables, &c. or by bearing a Part in the Shares or Stakes, or in betting on the Hands of ſuch as play, &c. win any Sum of Money, or other valuable Things whatſoever, the Perſon ſo offending ſhall, *ipſo facto*, forfeit treble the Value of the Money, or other Thing ſo obtained, and the Informer or Proſecutor recover treble Coſts.

If loſe more than 100*l.* not liable to make it good, and all Securities, &c. void.

And further, That if any Perſon ſhall play at Gaming, (other than with or for ready Money) or ſhall bett on the Sides of thoſe that do, and ſhall loſe any Sum exceeding 100*l.* at any one Time, and not pay down the ſame at the Time it is loſt, the Party loſing ſhall not be compelled to make it good. All Judgments, Bonds, Bills, &c. enter'd into for Satisfaction ſhall be void, and the Perſon winning is to forfeit treble the Value of all his Winnings above 100*l.* and the Informer to have treble Coſts. 16 *Car.* 2. *c.* 7.

Two or more Juſtices may cauſe Gameſters to appear before them.

By Stat. 9 *Ann.* *c.* 14. Any two or more Juſtices of the Peace may cauſe ſuch Perſons to be brought before 'em as they ſuſpect have no viſible Eſtate or Profeſſion to maintain themſelves; and if they do not make it appear, that the Principal Part of their Expences is maintained without Gaming, then the Juſtices may require

require Securities for their good Behaviour for twelve Months; and if they cannot find ſufficient Sureties, they are to be committed to the Common Gaol. 9 *Ann. c.* 14.

If they play or bett during the Time, to the Value of 20*s.* they forfeit their Recognizances. Stat. *ibid.*

Forfeit their Recognizance on playing, &c.

And if any Perſon, by Fraud in playing at Cards, Dice, *&c.* or by bearing a Share in the Stakes, or by betting, ſhall win to themſelves, or any other, any Sum or Sums of Money, or other valuable Thing or Things whatſoever, or ſhall win any Sum above 10*l.* at one Time, and being convicted of either of the ſaid Offences by Indictment or Information, ſhall forfeit five Times the Value of the Sum or Sums of Money, or other Things ſo won as aforeſaid; and in Caſe of ſuch Fraud as aforeſaid ſhall be deemed infamous, and ſuffer ſuch corporal Puniſhment as in Caſes of wilful Perjury; and ſuch Penalty to be recovered by ſuch Perſon or Perſons as ſhall ſue for the ſame by ſuch Action as aforeſaid. 9 *Ann. c.* 14.

If any one cheat at Play, or win above 10 l. at one Time, to forfeit five Times the Value, and liable to the Pillory.

Any one that aſſaults, and beats, or challenges to fight any other Perſon, on Account of Money won at Gaming, being convicted thereof, ſhall forfeit all his Goods, and be impriſoned during two Years. *Ibid.*

If any aſſault or challenge at Play.

Any Perſon, playing at Cards, Dice, *&c.* or betting and loſing the Value of 10*l.* and paying the ſame, may within three Months ſue for and recover the Money ſo loſt from the Winner, with Coſts, *&c.* and if the Loſer do not ſue, any other Perſon has Power to ſue and recover the ſame, and treble the Value, with Coſts; one Moiety to the Proſecutor, and the other to the Poor. And all Notes, Bills, Bonds, or other Securities given for Money won at Gaming, or for repaying any Money knowingly lent for ſuch Gaming or Betting, ſhall be void, and of no Effect. *Ibidem.*

Perſon loſing above 10 l. may recover his Money again, and after three Months any one may bring the Action.

On an Action brought in a Caſe of Gaming, the Defendant, in Conſideration the Plaintiff would give him 5*s.* promiſed to give the Plaintiff 40*s.* if ever he play'd at a certain Game for Money or Wine.

It was moved, that there was no ſuch Play as the Game mentioned; but the Action was adjudged good, and the Court approved of the Conſideration to reſtrain Gaming. *Raym. Rep.* 13.

Gameſters becoming Bankrupt ſhall have no Relief out of their Eſtates. *Vide* Stat. 5 *Geo. c.* 24.

Gameſters becoming Bankrupt.

By Stat. 2 *&* 3 *P. & M. c.* 9. All Licences to keep Houſes or Places of unlawful Games ſhall be void.

By

By Stat. 39 *Eliz. c.* 4. Fencing and Stage-Plays are unlawful Games; for the Offenders in that kind are made Vagabonds.

One Juſtice may commit for cheating at Play. *Cro. Car.* 235.

All Securities for Money won at Play are void.

By Stat. 9 *Ann. c.* 14. All perſonal Security given for Money won or lent at Play ſhall be void; and if 'tis in Lands, *&c.* it ſhall come to the Perſon to whom the ſame ſhould come after the Death of the Mortgagor; and all Conveyances made to prevent it from coming to him, ſhall be fraudulent and void.

Gameſters obliged to anſwer upon Oath.

All Perſons liable to be ſued by Virtue of Stat. 9 *Ann. c.* 14. ſhall be obliged and compellable to anſwer upon Oath ſuch Bill or Bills as ſhall be preferred againſt him or them, for diſcovering the Sum and Sums of Money, or other Thing ſo won at Play, as aforeſaid.

N. B. Before this Act the Winner was not compellable to diſcover or anſwer a Bill in Equity, but might have demurred, it being to make him liable to Forfeitures and Penalties.

Playing for Recreation not within the gaming Acts.

It has been reſolved, that if the Gueſts in any Inn or Tavern call for a Pair of Dice or Tables, and for their Recreation play with them; or if any Neighbours play at Bowls for their Recreation, *&c.* that this is not within the Statute, for theſe Houſes are not kept for Lucre or Gain.

In the Caſe of *Whitgrave* and *Chancey*, 1 *Lut.* 180. all the Court was of Opinion, that *Indeb. Aſſumpſit* doth not lie for Money won at Play; but it ought to be a ſpecial Declaration.

What Sums are within the gaming Acts.

If a Ring of 20*l.* Value be loſt and delivered at Play, and Bond given for 100*l.* more loſt at the ſame Time, the Bond is not within the Statute of 16 *Car.* 2. *c.* 7. *Danvers* and *Thiſtlethayt*'s Caſe. 1 *Lev.* 244.

80*l.* was won at one Meeting, and another Meeting was appointed, and the Defendant won 70*l.* more, above 100*l.* in all; the better Opinion was, that it was not within the Statute, tho' if it had been pleaded, that the ſeveral Meetings were purpoſely to elude the Statute, it might be otherwiſe. 2 *Mod.* 54. *Hill* and *Pheaſant* in *B. C.* the Caſe of *Edgbury* and *Roſendale* was cited.

If one loſe at one Time above 100*l.* on Tick, tho' it be to different Perſons, yet it is within 16 *Car.* 2. *c.* 7. *Hudſon* and *Malin*'s Caſe. *Trin.* 28 *Car.* 2. *B. R.*

But if a Wager be on a meer collateral Matter, and the Event doth not depend on the Succeſs of the Game, it is not within the Statute. If a Wager on a collateral Matter, not within the Act.

One owes me Money *bona fide* on a Bond a Year ago, now we meet, and I agree if this Horſe wins I will deliver the Bond up; this is within the Intent of the Act.

There is a Proviſo in 9 *Ann. c.* 25. That any Perſon may play in the King's Palace, while he is there reſident, &c.

A Warrant to apprehend a Perſon for unlawful Gaming, having no viſible Eſtate.

WHereas *we are informed, That* C. D. *of*, &c. *doth frequently uſe and play at Cards, Dice, and other Games in the Pariſh of*, &c. *and we have good Reaſon to ſuſpect, that the ſaid* C. D. *hath not any Eſtate, or follows any Employment to maintain himſelf, but that he lives moſtly by Gaming and Sharping other People: Theſe are therefore in His Majeſty's Name to require you to apprehend the ſaid* C. D. *and bring him before us, or ſome other Juſtices of the Peace, to anſwer what ſhall be objected againſt him by*, &c. *and that he may be examined concerning the Premiſſes, and dealt with according to Law.* Given, &c. 9 Ann. c. 25.

The Warrant of Commitment.

Eſſex, ſſ. WHereas *we whoſe Names are hereunto ſubſcribed, two of His Majeſty's Juſtices*, &c. *having juſt Reaſon to ſuſpect, that* D. T. *of* Hornchurch *in the ſaid County, hath no viſible Eſtate, Profeſſion, or Calling, but doth for the moſt part ſupport himſelf by Gaming, did on the Day of the Date hereof, cauſe the ſaid* D. T. *to be brought before us, and upon his Examination, and other due Proof, it appeareth unto us, that the principal Part of his Expences is maintained by Gaming; and he being required by us at the ſame Time to find Securities for his good Behaviour for twelve Months, refuſed ſo to do. Theſe are therefore to require you to convey the ſaid* D. T. *to the common Gaol for the ſaid County; commanding you the Keeper thereof to receive him into your Cuſtody, there to remain till he ſhall give ſuch Security as aforeſaid.* Given, &c.

A Com-

A Commitment of a Perſon for keeping an unlawful Gaming-houſe.

WHereas C. D. *has this Day been convicted before me, for keeping an unlawful Gaming houſe in the Pariſh of*, &c. *and refuſing to give Security for his not keeping ſuch Gaming-houſe for the future, as the Acts of Parliament in ſuch Caſes require: Theſe are therefore to command you to convey the ſaid* D. C. *to the common Gaol of*, &c. *aforeſaid, hereby requiring you the ſaid Keeper of the ſaid Gaol him ſafely to keep in your Cuſtody, until he ſhall give Security as aforeſaid, and pay the Sum of* 40s. *which he hath forfeited for the Offence aforeſaid.* Given, &c.

An Indictment for keeping a Gaming-houſe.

Eſſex, ſſ. JURꝝ', &c. quod C. D. de H. in Com', &c. Sutoꝛ 4 die Febr' Anno, &c. ac diverſis aliis diebus & vicibus ante diem hujus inquiſitionis commune hoſpitium apud H. in Com' pꝛæd' manutenebat & adhuc manutenet & ibidem diverſas perſonas ſuſpect' cum pictis Chartis & aleis illicite ludere permittebat tam in die quam in nocte poſt hoꝛas debitas & legitimas ad grabamen inhabitantium ibidem & in malum exemplum alioꝛum dict' Dom' Beg' ſubditoꝛum & contra foꝛmam ſtatut' in hujuſmodi caſu edit' & pꝛovis, & contra pacem, &c.

Gꝛey-hound. See Game.
Garden. See Hedge-bꝛeaking.

Gaol and Gaoler. Vide Priſoner.

BY Stat. 1 *E.* 3. *c.* 7. the Juſtices of either Bench, Aſſize, and Gaol-Delivery ſhall hear and determine all Plaints made againſt Sheriffs and Gaolers.

By Stat. 5 *H.* 4. *c.* 10. Juſtices of Peace ſhall impriſon none but in the common Gaol. But by 11 & 12 *W.* 3. *c.* 19. (Murderers and Felons only are declared to be meant) ſaving to Lords and others (who have Gaols) their Franchiſe in this Caſe. *Cro. Eliz.* 830.

And therefore the Juſtices of Peace offend, who commit Felons and others to the Compter in *London*, and

and other Priſons than the common Gaols. *Trin.* 10 *J.* 1. *C. L.* 9. *f.* 119. *Co.* 2. *In.* 43. *Cro. Eliz.* 289. *Scavage* verſus *Tateham.*

By Stat. 19 *H.* 7. *c.* 10. the Sheriff of every County ſhall have the Keeping of the common Gaol there, except ſuch as are held by Inheritance or Succeſſion; alſo all Letters Patent of the Keeping of Gaols for Life or Years are annulled and void.

Every County hath two Gaols, one for Debt, which may be in any Houſe where the Sheriff pleaſes, the other for the Peace and Pleas of the Crown, which is the County-Gaol, and the Gaoler is the Keeper thereof. *Lat. b* 16. And if a Gaoler voluntarily permit a Felon to eſcape, it is Felony; tho' he may kill an unruly Priſoner, and it be no Felony; but if it be by hard Uſage it is Murder. And if the Gaol be broken by Thieves the Gaoler is chargeable, but not if it be broken by Enemies. 3 *Inſt.* 52. *Co.* 9. *Rep. f.* 95. *b.* 3 *Cro.* 815.

Gaoler refuſing to receive a Priſoner.

If a Gaoler refuſe to receive a Felon ſent to him by lawful Warrant, *&c.* he is liable to be fined, and the Townſhip ſhall keep him till the Gaol-Delivery. *Dalt.* 340.

Breaking Priſon.

If a Felon break Priſon, 'tis Felony; but if the Doors are open, and he go out 'tis not, and Eſcaping from the Hands of a Conſtable, where lawfully detained, is a Breach of Priſon.

Reſcuing a Priſoner.

Reſcuing of a Felon is Felony in the Reſcuer; and and if a Priſoner be reſcued at the Gallows, or going to Execution, it is a Breaking of Priſon; and if a Gaoler permits a voluntary Eſcape 'tis Felony in him; but if the Eſcape is only negligent, and not voluntary, 'tis Felony in the Priſoner, and a Miſdemeanor only in the Gaoler. *Dalt.* 377, 378.

Relief of Priſoners in Gaol.

For the Relief of Priſoners in Gaol, Juſtices in Seſſions have Power to tax every Pariſh in the County, not exceeding 8 *d. per* Week, and this Tax may be levied every *Sunday* by the Church-wardens, and quarterly paid to the Conſtables; or if in a Corporation, to the chief Officer; and ſuch Officer, *&c.* is to pay the ſame to the Collector every Quarter-Seſſions, who is to diſtribute it weekly; and Officers neglecting their Duty are liable to forfeit 5 *l.* 14 *Eliz. c.* 5.

Gaols out of Repair.

Upon Preſentment by a Grand Jury in Seſſions, that a Gaol is out of Repair, inſufficient, or inconvenient, the major Part of the Juſtices may agree upon a Sum for the Rebuilding or Repairing thereof, and by War-

rant under their Hands and Seals may order the ſame to be levied upon the ſeveral Hundreds and Diviſions, by a proportionable Rate. 11 & 12 *W.* 3. *c.* 19. And if any Perſon refuſe to pay the Rate, one Juſtice preſent at the Seſſions may make a Warrant to the Collector to levy it by Diſtreſs and Sale, &c. and if not paid in four Days, then the Goods may be appraiſed by two Inhabitants reſiding where taken, or other ſufficient Perſons, and ſold by the Collector, returning the Overplus; and Receivers are to be appointed by Juſtices in Seſſions on their giving Security to be accountable for the Money. 11 & 12 *W.* 3. *c.* 19. 10 *Ann. c.* 14.

Juſtices may covenant with Perſons for building, finiſhing, or repairing, &c.

The aforeſaid Act of 11 & 12 *W.* 3. *c.* 19. was to continue for ten Years; but by Stat. 10 *Ann. c.* 14. 'tis continued from the firſt of *May*, 1712, for ſeven Years, and from thence to the End of the next Seſſion of Parliament.

Juſtices in the County have no Power to meddle in Corporations, but Head Officers only. 14 *Eliz. c.* 5.

Juſtices may provide Materials to ſet Priſoners to Work.

Juſtices of every County, at Quarter-Seſſions may provide (if needful) a Stock of ſuch Materials as they find convenient for ſetting poor Priſoners at Work, by ſuch Ways as other County Charges are by Law raiſed, to pay and provide Perſons to overſee and ſet ſuch Priſoners at Work, and make ſuch Orders about the Premiſſes as ſhall be thought needful, and for puniſhing Neglects and other Abuſes, and beſtowing the Profits ariſing by the Priſoners Labour for their Relief, and may alter and revoke ſuch Orders when neceſſary. No Pariſh to be rated above 6*d.* in the Pound toward the Premiſſes.

When a Sheriff may remove Priſoners.

Sheriff, or any other Perſon, having the Cuſtody of the Gaol, may by Conſent of three Juſtices (*Quor.* one) in the Time of Infection, remove ſick and other Perſons from the Gaol, and provide ſafe Places for them; Juſtices in Corporations have the ſame Power.

Juſtice, or Quarter-Seſſions, may ſettle what Perſons ſhall pay, that are under Arreſt for each Night's Lodging, or other Expences. Stat. 22 & 23 *Car.* 2. *c.* 20.

Juſtices to ſettle what Priſoners are to pay.

Three Juſtices (*Quor.* one) may ſettle Gaoler's Fees for Commitment, Diſcharge, and Chamber-Rent within their ſeveral Precincts, except *London*, *Middleſex*, and *Surrey*, which are to be ſettled by the two Chief Juſtices and Chief Baron, or two of them, and the Juſtices of the Peace in their ſeveral Juriſdictions. And the

the ſeveral Rates and Fees are to be ſigned by the Chief Juſtices and Chief Baron, or two of them, and the Juſtices of Peace for *London* and *Middleſex*, and *Surrey*, and by the Judges in their Circuits, and the Juſtices in their Precincts in the other Counties; to be regiſter'd by the Clerk of the Peace, and hung up in a Table in every Priſon. *Ibid.*

No Officer ſhall carry any Priſoner to any Tavern, &c. without Conſent of the Party, ſo as to charge ſuch Priſoner with any Sum of Money for Wine, Beer, or Victuals, but what the ſaid Perſon ſhall call for on his own Accord.

Officer not to carry a Priſoner into Tavern, &c. without his Conſent; and Priſoners to have their Victuals whence they pleaſe.

Priſoners ſhall be permitted to ſend for their neceſſary Food whence they pleaſe, and uſe ſuch Bedding, Linen, and other Things as they think fit, without purloining, detaining, or paying for the ſame. *Ibid.*

Priſoners for Debt and Felons ſhall not be lodged together in one Room. Any Sheriff, Gaoler, or Keeper of Priſons offending herein ſhall loſe his Place, and treble Damages to the Party grieved, to be recovered by Virtue of that Act. *Ibid.*

Gaolers Calendars ought to declare who are bail'd, as well as thoſe in Priſon. *Blac.* 152.

An Indictment againſt a Perſon for breaking Gaol.

JURR', &c. quod C. D. nuper de, &c. in Com' præd' die & anno, &c. apud, &c. in Com' præd' arreſtat' & impriſonat' fuit in Gaola dict' Dom' Regis apud, &c. in Com' præd' pro diverſis felon'is per ipſum perpetrat' die, &c. ſuprad'ict' vi & armis, &c. quodque ipſe præd' C. D. Gaolam dict' Dom' Regis apud, &c. præd' fregit & E. M. & K. L. adtunc priſonarios in eadem Gaola exiſten' adtunc & ibidem felonice ad largum ire permiſit contra Pacem, &c.

A Gaoler ſhall take but one Fee of a Priſoner indicted for two Felonies.

Where Impriſonment is directed by any Statute, and no Time appointed for the Commitment of an Offender, it muſt be preſently; and if no Time is expreſly limited for the Continuance in Cuſtody, 'tis at the Diſcretion of the Court. 3 *Rep.*

So much of the Act 10 *Ann. c.* 14. for reviving and continuing ſeveral Acts as relate to the Building and Repairing County-Gaols, is made perpetual by 6 *Geo. c.* 19.

And by the ſame Statute, Juſtices of Peace within their ſeveral Juriſdictions, may commit Vagrants, and other Offenders, charged with ſmall Offences to the common Gaol, or Houſe of Correction as they ſhall think fit.

Gauger. See Exciſe.

Good Behaviour. Vide Behaviour.

Gun-powder.

Quantity allow'd to be kept in one Place.

NO Perſon is to keep more than ſix Hundred Pounds of Powder at a Time in any Store-houſe, &c. in the Cities of *London* and *Weſtminſter*, or the Suburbs, within three Miles of the Tower, St. *James*'s Palace, &c. or two Miles of any Magazine: Two Juſtices may ſummon Perſons dealing in Gun-powder, and examine them on Oath; and if they have more than the Quantities above mentioned, ſhall cauſe them to remove the ſame; refuſing to remove it in 24 Hours, after Notice, incurs a Forfeiture of 20 *s.* for every Hundred Weight; and refuſing to be examined, they ſhall be committed to the County Gaol. 5 *Geo.* 1. *c.* 26.

Juſtices Power of ſearching.

Two Juſtices may iſſue their Warrants for ſearching in the Day-time any Store-houſe for keeping of Gun-powder, and juſtify Breaking open Doors. Perſons oppoſing the Search to forfeit 5 *l.* to any Perſon who will ſue for the ſame in ſix Months.

Places for Ware-houſes.

Juſtices of the Peace in *Eſſex*, *Kent*, and *Surrey*, at their General Quarter-Seſſions, may appoint proper Plats of Ground, not exceeding two Acres in one Place, for erecting Ware-houſes for keeping Gun-powder, agreeing with the Owners of the Ground, &c.

How Gun-powder is to be carried thro' London, &c.

No more than twenty Hundred Weight of Gun-powder is to be carried at a Time thro' *London* or *Weſtminſter*, &c. and all Gun-powder ſhall be carried in cover'd Carriages, and the Barrels cloſe jointed and hoop'd, and be put into Bags of Leather or Canvas. Gun-powder, carried by Man or Horſe, ſhall be put into ſuch Caſes, on Pain of Forfeiture; the Conviction to be before two Juſtices. But this does not affect any of his Majeſty's Magazines, &c. Stat. 5 *Geo.* 1. *c.* 26.

By Stat. 11. G. 1. It is enacted, That it ſhall not be lawful to keep within *London* or *Weſtminſter*, or the Suburbs thereof, or within three Miles of the Tower, or of the Palace of St. *James*'s, or within two Miles of any Magazine belonging to the Crown, more than two hundred Pound Weight of Gun-powder at one time in any Houſe or Houſes, or other Place under the ſame Roof, or in any Yard, for more than 24 Hours, on Forfeiture of all the Gun-powder, and the Value, with full Coſts to any Perſon, other than the Owner of the Gun-powder. How much Gun-powder may be kept in one Place.

The Juſtices of Peace ſhall on Demand by any Pariſh Officer, or two or more Houſholders, aſſigning a reaſonable Cauſe iſſue Warrants *gratis*; and upon every ſuch Search, the Searchers ſhall immediately ſeize, and within twelve Hours amove all ſuch Gun-powder as ſhall be found within the ſaid Limits, exceeding the Quantity allowed by this Act; and every Perſon obſtructing ſuch Seizure or Amoval, ſhall forfeit 5 *l.* to the Informer.

If any Perſon ſhall uſe any Iron Hammer, ſhod or plated with Iron or Steel, in any ſuch Place, while any Gun-powder is there, being convicted thereof, in one Month after the Offence, before any one or more Juſtices, he ſhall forfeit 20 *s.* to the Informer, to be levied by Diſtreſs and Sale of Goods, and for want of Diſtreſs, ſhall be ſent to the Houſe of Correction not exceeding one Month, or leſs than fourteen Days. None to uſe Iron Hammers where Gun-powder is.

Not to extend to any Store-houſe or Magazine belonging to the Crown, wherein Gun-powder, or other Stores ſhall be kept for the Uſe of the Publick, or to hinder the proving Gun-powder by his Majeſty's Officers as is uſual, or to the carrying of Gun-powder to or from ſuch Magazines, or with Forces in their Marches. Not to extend to the Magazines of the Crown.

If any Suit be commenced for any thing done in Purſuance of this Act, the Defendant may plead the general Iſſue, &c. and recover treble Coſts.

The Act 5 G. 1. *c.* 26. and all the Proviſions therein not hereby altered ſhall be in full Force; and the ſaid Act, and this Preſent, ſhall be deemed to be publick Acts, and be judicially taken Notice of as ſuch in all Courts and Places.

A Warrant to search for Gun-powder.

Midd. ss. *WHereas Notice has been given to us* A. B. *and* C. D. *Esqrs; two of his Majesty's Justices of Peace for the County aforesaid, that* J. S. *of*, &c. *within your Parish, keeps a larger Quantity of Gun-powder in his Ware-house than is allowed by Law: These are therefore to require you to make diligent Search in the Store-house of the said* J. S. *in the Day-time, for such Gun-powder; and if you find in the said Store-house more than two Hundred Pounds Weight, that you do certify the same to us, in Order to our Proceeding therein as the Law directs.* Given, *&c.*

Guns. See **Game.**

Hares and Hawking. See Game.

Vide *Raym.* 378. 1 *Ven.* 39, 419. *Sid.* 247. 1 *Saund.* 263. 4 *Mod.* 49, 50.

Hawkers and Pedlars.

Continued by 9 & 10 W. 3. c. 27. continued by 12 & 13 W. 3. c. 11.

BY Stat. 8 & 9 *W.* 3. *c.* 25. every Hawker, Pedlar, or Petty Chapman, or other trading Person, going from Town to Town, or other Mens Houses.

What Hawkers, &c. are to pay.

	l.	*s.*	*d.*
If on Foot must pay — —	4	00	00
If with Horse, Ass, or Mule, for every one of them four Pounds a-piece	4	00	00

Every Hawker, *&c.* must take a License; and if he travels without, or contrary to his License, he forfeits for every Offence, to the Informer and Poor of the Parish where discovered, 12 *l.*

Refusing to shew his License.

If he refuse to shew his License; being demanded by any Officer of the Peace, he forfeits to the Poor, where the Demand shall be made, 5 *l.* and for Non-payment of the same must suffer as a Vagrant, and be sent to the House of Correction.

Forging a License.

Whosoever shall forge or travel, with any forged License, forfeits 50 *l.* one Moiety to the King, the other to the Prosecutor, to be recovered in the Courts of *Westminster*, and be subject to the Penalties for Forgery.

Perſons ſued may plead the General Iſſue, and give the Act in Evidence, and, if Verdict for 'em, ſhall have treble Coſts. Perſons ſued.

Conſtables, or other Officers, neglecting or refuſing to aſſiſt in the Execution of this Act, convicted on Oath before a Juſtice of the Peace, forfeit for every Offence, to the Poor and Proſecutor, to be levied by Diſtreſs, &c. 2 *l.* Officers refuſing to do their Duty, &c.

Any Perſon may ſeize and detain ſuch Hawker till he produce a Licenſe, or if trading without a Licenſe, till Notice be given to a Pariſh Officer, who is to carry him before a Juſtice of Peace, who, upon Confeſſion of the Party, or Oath of one Witneſs, that the Offender had traded without a Licenſe produced, ſhall by Warrant levy 12 *l.* Any Perſon may ſeize and detain Hawker, &c.

To whom the Acts does not extend.

Not to extend to
- Acts of Parliament.
- Almanacks licenſed.
- Fairs, ſelling Goods therein.
- Fiſh.
- Fruit.
- Sellers of
  - Gazettes.
  - Markets, ſelling Goods therein.
  - Prayers, Forms thereof.
  - Papers licenſed.
  - Proclamations.
  - Victuals.

Makers or their Agents, Apprentices, Children, Servants. Of any Goods or Wares in this Kingdom, and ſelling Goods of their own Making.

Artificers. Coopers, Glaziers, Harneſs-makers, Plumbers, Tinkers, or Other Perſons, trading in mending Kettles, Tubs, Houſhold Goods, or Harneſs, going about and carrying with them proper Materials for mending the ſame.

All Perſons may ſell any Sorts of Goods in any publick Market or Fair, as they lawfully might have done before the Making the ſaid Act. And by 9 & 10 *W.* 3. *c.* 27. the Act is not to extend to licenſe any Hawker, &c. to ſell any Wares, &c. in any City, Perſons may ſell Goods in Fairs and Markets as before.

Borough, Town Corporate, or Market-Town, otherwiſe than might have been done before the Making the ſaid Act.

No Perſon to lend or hire out his Licenſe.

By 3 & 4 *Ann. c.* 4. the ſaid Acts are continued from 1710 for 96 Years; and every Perſon trading as a Hawker, &c. is to produce his Licenſe on Demand, or elſe he ſhall be liable to the ſame Penalties, as if he had traded without a Licenſe. And if any Perſon lend a Licenſe to Hire, the Lender or the Trader ſhall forfeit 40 *l.* one Moiety to the King, and the other to the Informer, to be recovered by Action of Debt, Information, &c. and the Lender ſhall forfeit the Licenſe. But Traders in the Woollen and Linen Manufactures, ſelling their Goods at Markets or Fairs, are not to be deemed Hawkers. And Makers and Sellers of *Engliſh* Bone-Lace, going from Houſe to Houſe, &c. are not adjudged Hawkers, by 4 *Geo.* 1. *c.* 6.

None to hawk Brandy, &c.

By an Act made 2 G. 2. no Perſon ſhall hawk, or ſell any Brandy, or other Spirits about the Streets in a Wheelbarrow, or upon the Water in any Boat or Veſſel, or on any Bulk, Shed or Stall, or on, or in any other Place, other than in his Dwelling-houſe, on Forfeiture of 10 *l.* and any Juſtice of the Peace near the Place where the Offence is committed, on Confeſſion of the Offender, or on the Oath of one or more Witneſſes, ſhall hear and determine ſuch Offence in a ſummary Way, on Complaint within one Calendar Month after the Offence committed; and on Conviction, the Forfeiture ſhall be levied under their Hands and Seals; one Moiety to the Informer, and the other to the Poor, &c. and if the Perſon convicted ſhall refuſe to pay, or ſhall not have Goods, on which the ſame may be levied, the Juſtice ſhall commit him to the Houſe of Correction, to be kept to hard Labour for any Time, not exceeding three Months, nor leſs than one Month.

If any Perſon be ſued for any thing in Purſuance of this Act, he may plead the general Iſſue, and give the Act in Evidence; and if the Plaintiff be non-ſuited, &c. the Defendant ſhall have treble Coſts.

This Act to continue for five Years, and to the End of the then next Seſſion of Parliament.

Not to extend to Arrack, Rum, Citron-water, or Uſquebaugh, uſually imported from the *Eaſt-Indies*, or the *Britiſh* Plantations, or from *Ireland*, nor to *Scotland*.

A Conviction of a Hawker refusing to produce his License.

MEmorandum, *That on*, &c. *at*, &c. A. B. *came before me, and as well for himself as the Poor of the Parish*, &c. *exibited an Information on Oath against* E. F. *of*, &c. *that he the said* E. F. *not being the real Worker or Maker of any Goods, Wares or Merchandizes, within the Kingdom of* England, &c. *and not being the Apprentice or Servant of any real Worker or Maker of Goods, Wares, or Merchadizes on*, &c. *in the Parish of*, &c. *was found wandring abroad from House to House, and trading as a Hawker, Pedlar, and petty Chapman, carrying about with him divers Parcels of Goods*, viz. &c. *and that in such wandering, he the said* E. F. *did expose to Sale several Goods, not being in any Market or Fair without producing any License for the same, contrary to the Statute in that Case made. And the said* E. F. *after having been first summoned in his own proper Person, appearing before me one of his Majesty's Justices of*, &c. (*and the Information being read to him and heard*) *he the said* E. F. *did confess before me, that he did on*, &c. *sell*, &c. *as in the said Information mentioned. Whereupon it doth manifestly appear, that he the said* E. F. *is guilty of the Offence laid to his Charge in the said Information; and I do hereby declare him convicted thereof*, &c. In Witness, &c. 9 & 10 W. 3. c. 27.

A Warrant to levy 12 *l.* for Hawking without a License.

Essex, ss. WHereas *Information hath been given unto me, one of his Majesty's Justices of the Peace for the said County, upon the Oath of* C. D. *of*, &c. *that* A. P. *of*, &c. *Labourer, did on the 4th of* May *Instant, trade and hawk without License in*, &c. *and carried about and exposed to Sale three Pieces of Silks, called*, &c. *he not being the Maker of such Silks, nor Apprentice, Agent, Child, or Servant to the real Worker or Maker of such Silks he so carried abroad and exposed to Sale as aforesaid, which the said* A. P. *hath confessed before me upon his Examination, contrary to a late Act of Parliament for licensing Hawkers*, &c. *for which said Offence he the said* A. P. *hath forfeited the Sum of* 12 *l. the one Moiety thereof to the Informer, and* 8 & 9 W. 3. c. 27.

the other Moiety to the Poor of the Pariſh of, &c. *where the ſaid Offence was committed. Theſe are therefore to authorize and require you, or any of you, upon Sight hereof, to demand of the ſaid* A. P. *the ſaid Sum of* 12 *l. and in Caſe he refuſe to pay the ſame, that then you levy the ſaid Sum by Diſtreſs and Sale of the Goods, Wares, and Merchandizes of the ſaid* A. P. (*rendering to him the Overplus, if any be, reaſonable Charges for taking the ſaid Diſtreſs being firſt deducted*) *to be employed to the Uſe above mentioned, and in Caſe of his Inability for Payment thereof, that then you forthwith bring the ſaid* A. P. *before me, or any other of his Majeſty's Juſtices of the Peace of the County aforeſaid, to be farther dealt with as the Laws in that Caſe provided do direct. And hereof fail not.* Given, &c.

Hays. See Game.

Hay, and Hay-Market.

What Weight a Truſs of Hay muſt be of.

PErſons offering Hay to be ſold within the weekly Bills of Mortality, between the laſt of *Auguſt* and the firſt of *June*, not weighing 56 Pounds a Truſs at leaſt, and between the firſt of *June* and the laſt of *Auguſt*, not weighing 60 Pounds a Truſs new, and old 56 Pounds, forfeit 1 *s.* 6 *d.* a Truſs by Diſtreſs and Sale; if not paid in ſix Days, committed till Payment; if on Conviction, to Poor and Informer; if on view, to Poor, and Repair of Highways. Stat. 2 *W.* & *M. c.* 8.

No Carts to ſtand after two a-Clock.

No Perſons ſhall ſuffer their Waggons, Carts, &c. to ſtand in any Place within the weekly Bills of Mortality loaden with Hay or Straw to be ſold from *Michaelmas* to *Lady-day* after two a-Clock in the Afternoon, nor from *Lady-day* to *Michaelmas*, after three a-Clock.

What every Cart is to pay for Hay and Straw.

Owner of every Load or Parcel of Hay brought into Hay-Market, ſhall pay 3 *d.* and 1 *d.* for every Load of Straw to ſuch Perſons as Juſtices of *Middleſex* and *Weſtminſter* ſhall appoint, towards the Amending the Street called the Hay-market, the ſame Hay, &c. not being ſold, ſhall not pay twice; on Refuſal, Diſtreſs by Warrant from one Juſtice on Oath of the Party demanding the ſame, Sale of, &c. in three Days.

Bounds of the Hay-market.

Poſts, or Stones to be ſet up by Juſtice for the Bounds of the Hay-market.

Toll-

Toll-taker twice every Maket-day, ſhall ring a Bell an Hour before, and at the Expiration of the Time when Carts are to leave the Market, Perſons not departing with Carts after ſuch Notice, ſhall forfeit 5 *s.* by 2 *W. & M. c.* 8. which Forfeitures ſhall be demanded the ſame Day Offence is committed; Complaint to one Juſtice (*Quorum*) before next Market-day; Offender to have Notice of it next Time he comes to Market, or elſe not liable to pay. Collectors of ſaid Toll ſhall yearly at every *Eaſter* Seſſions give to the Juſtices of Peace of the ſaid County and City a particular Account upon Oath of their Receipts and Diſburſemens, and the Overplus to go to the County of *Middleſex*.

Toll-takers ring a Bell. 8 & 9 W. 3. c. 17.

Collector of Toll to Account yearly to Juſtices.

Heath. See Game.

Hedge-breaking. See Wood.

BReakers and Cutters of Fences, Hedges, Pales, or Rails, Cutters and Carriers away of Corn growing.

How Breakers of Hedges, &c. are puniſh'd.

Pullers up of Fruit-trees with Intent to carry them away.

Cutters and Spoilers of Poles, Trees or Wood.

Being convicted before one Juſtice, either upon Confeſſion or Oath of one Witneſs, muſt pay what Damage the Juſtice ſhall think fit; and if not able, may be whipped by the Conſtable, who neglecting may be committed without Bail till it be done.

The ſecond Offence is Whipping.

But the Juſtice may not proceed in his own Caſe without Aſſiſtance of another Juſtice. Stat. 43 *Eliz. c.* 7.

And by Stat. 15 *Car.* 2. *c.* 2. A Conſtable or any other may apprehend Perſons ſuſpected of ſtealing Bark, Broom, Furze, Gates, Hedge-wood, Pales, Poles, Poſts, Rails, Stiles, Trees growing, Underwood, Wood, and by Warrant from one Juſtice, may ſearch their Houſes; and if they find any of thoſe Things, they may carry the Perſon on whom found before a Juſtice of Peace; and if he cannot give a good Account how he came by the ſame, or in a convenient Time produce the Perſon of whom bought, or ſome Witneſs to prove the Sale on Oath, he ſhall make ſuch Recompence as the Juſtice ſhall appoint, and pay a Sum not exceeding 10 *s.* for the Uſe of the Poor

Stealers of Gates, &c. to be apprehended.

How puniſhed.

Poor where the Offence was committed; and for Default thereof, he ſhall be ſent to the Houſe of Correction for any Time, not exceeding a Month, or be whipped; the ſecond Offence, to be committed to the Houſe of Correction for a Month, and to be kept to hard Labour, and for the third Offence to be adjudged an incorrigible Rogue.

Juſtice may order Buyer of ſtolen Wood to pay treble Damages.

If one be convicted of buying ſtolen Wood, knowing it to be ſtolen, one Juſtice may order ſuch Buyer to pay treble the Value to him, from whom ſtolen, and on Non-payment, may levy the ſame by Diſtreſs; and in Default thereof, commit the Offender for one Month.

The Conviction muſt be within ſix Weeks after the Offence committed, and none ſhall be puniſhed by this Act, if he hath been puniſhed for the ſame Offence by any former Law. Stat. 15 *Car.* 2. *c.* 2.

How malicious Deſtroyers of Trees are to be puniſhed.

For malicious breaking down, cutting up, plucking up, throwing down, barking, or otherwiſe deſtroying, defacing, or ſpoiling any Timber-Trees, Fruit-trees, or other Trees, the Offenders are to be ſent to the Houſe of Correction for three Months, and to be whipped once a Month in the Market-Town, where the Houſe of Correction ſtands, or the next Town by Order of two Juſtices, or the Seſſions. And the Offender is not to be diſcharged till he hath found Sureties for his good Behaviour for 2 Years; and if any Perſon maliciouſly ſet Fire to any Wood, Underwood, or Coppice, 'tis Felony. Stat. 1 *Geo.* 1. *c.* 48.

Pariſh to anſwer the Damages, unleſs Offenders be convicted in 6 Months.

And by 6 *Geo.* 1. *c.* 16. where any Perſons by Day or Night ſhall cut, throw down, bark, burn, ſpoil, or carry away any Trees, Woods, Wood-ſprings, Thorns, or Quickſets without the Owner's Conſent, or break open any Hedges, Gates, Poſts, &c. of Wood-Grounds, and the Offenders cannot be known, the Owners ſhall have ſuch Remedy and Satisfaction from the Inhabitants of the Place as for Dikes and Hedges overthrown by Perſons in the Night, by Stat. 13 *Ed.* 1. *c.* 46. by which the Pariſh ſhall be diſtrained to make good the Damage, unleſs the Offender be convicted within ſix Months after the Offence committed.

And where any Perſons deſtroy Wood, Timber, &c. the Juſtice of Peace of the Place, or Juſtices in Seſſions on Complaint by any Inhabitant, or the Owner of the Wood, are to cauſe the Offender to be apprehended, adjudge the Offence, and inflict the Puniſhments in the Act. 1 *Geo.* 1. *c.* 48.

The

The Conviction of Hedge-breakers, &c. must be by the Confeſſion of the Party, or the Oath of one Witneſs before one Juſtice. Perſons ſuſpected not giving a good Account how they came by Wood, &c. in their Poſſeſſion, is a Conviction. Whereupon the Juſtice may order Recompence to the Party injured, and 10 s. to the Poor, and on Default of Payment, the Juſtice may at his Diſcretion either ſend the Offender to the Houſe of Correction, or cauſe him to be whipped. 15 *Car.* 2. *c.* 2.

In Convictions on the Stat. 43 *Eliz. c.* 7. for cutting down Trees in the Night, the Number as well as the Nature of the Trees ought to be expreſſed; for in this Reſpect, 'tis like an Action of Treſpaſs, where the Number and Nature of the Trees are to be the Meaſure of the Damages; ſo that if an Action of Treſpaſs ſhould be afterwards brought for the Trees, the Conviction might be pleaded in Bar. Cro. Car. 289, 439. Sid. 107, 312. Style 215. 1 Lev. 108. Raym. 487.

The Defendant was convicted by two Juſtices upon the Stat. 1 G. 1. *c.* 48. for deſtroying Fruit-trees; and it was moved to quaſh this Conviction, becauſe it did not ſpecify the Puniſhment inflicted by that Statute, which is to be ſent to the Houſe of Correction for three Months, &c. and the better Opinion was, that this being a Special Judgment of the two Juſtices, they ſhould have ſpecified the Puniſhment inflicted by the Statute, becauſe it might be different from the Puniſhment appointed by them; however, there being no Forfeiture in this Caſe, it was held, that *Ideo conſideratum eſt quod convictus eſt*, was ſufficient without ſetting forth the Puniſhment. *Trin.* 9 G. 1. *B. R.*

Warrant to apprehend a Perſon for deſtroying Timber-Trees.

Berks, ſſ. *WHereas Complaint hath been made before me by* D. E. *of the Pariſh of* S. *in this County, that on the ninth of* June *laſt,* C. D. *of the ſaid Pariſh, did maliciouſly cut and ſpoil one Timber-Tree, belonging to him the ſaid* D. E. *in a Ground called Long-Cloſe, contrary to the Statutes for Preſervation of Timber and Wood: Theſe are therefore in his Majeſty's Name, to require and authorize you to apprehend the ſaid* C. D. *and that you bring him before me, or ſome other of his Majeſty's Juſtices of the Peace for this County, in order to an Adjudication of the Offence, and Awarding the Puniſhment which the Statute directs. Given under my Hand and Seal,* &c. 6 G. 1. c. 16.

The

The Conviction or *Mittimus* for maliciously destroying Trees.

1 G. 1. c. 48. Two Justices.

Essex, ss. *Whereas upon the Complaint of* A. B. *of*, &c. *we whose Names are hereunto subscribed, two of his Majesty's Justices of the Peace for the said County, did cause* F. K. *of*, &c. *to be apprehended for a Trespass, and being now brought before us, We upon his Examination, and other due Proof do adjudge that the said* F. K. *did on the 5th Day of* August *last past at* M. *in the County aforesaid, maliciously* * *cut down Fruit trees of the said* A. B. *contrary to the Statute in that Case made and provided, of which Offence he is now, and doth stand convicted: We therefore require you to convey the aforesaid* F. K. *to the House of Correction, at* M. *in the said County; and to deliver him to the Master thereof; and we hereby require you the said Master to receive the said* F. K. *into your Custody, and him safely to keep in the House of Correction* † *for three Months next ensuing, and until he shall be legally discharged from thence: And we do likewise hereby order that the said* F. K. *shall be publickly whipped by you the said Master once in every Month, during the said three Months in the* * *Town of* M. *in the said County on a Market day there, between the Hours of eleven and two a Clock of the same Day, and for your so doing, this shall be your Warrant.* Given, &c.

* Or cut up, pluck up, bark, or spoil Timber-Trees, Fruit-Trees, or any other Trees as the Case is.

† Must give Sureties for his Behaviour for two Years.

* If the Offence was done in a Borough, or in a Corporation, then he must be whipped there.

An Order for the Buyer of stolen Wood to pay treble Damages, according to the Act of Parliament.

15 Car. 2. c. 2. *Whereas it hath been duly proved before me, That* S. P. *of*, &c. *hath lately bought several small Quantities of Coppice Wood of* R. C. *of*, &c. *who is a Person reputed to be of late very much addicted to Stealing of Wood, and that the said* S. P. *knew the said Coppice-Wood was stolen at the same Time he bought it of the said* R. C. *and that the same was the Wood of* T. A. *of*, &c. *and was worth the Sum of* 5 s. *at the Time the said* S. P. *bought the same: I do therefore order and direct, and hereby charge and require you the said* S. P. *to pay unto the said* T. A. *the Sum of* 15 s. *being treble the Value of the said Wood, which you have forfeited by the Offence aforesaid, according to the Act of Parliament in that Case made.* Given, &c.

Item

Hemp and Flax.

BY Stat. 15 *Car.* 2. *c.* 15. Foreigners, uſing the Trades of breaking, hickling, or dreſſing Hemp or Flax, and of making and whitening Thread, and ſpinning, weaving, making, whitening and bleaching Cloth made of Hemp or Flax only, and making Twine or Nets for Fiſhery or Stores, Cordage, or making Tapeſtry Hangings, and taking the Oaths of Allegiance and Supremacy before two Juſtices, ſhall enjoy all Privileges whatſoever as the natural-born Subjects of this Kingdom, after having exerciſed the ſaid Trades 3 Years; nor ſhall they be liable to other Impoſitions than natural born Subjects, unleſs they trade as Merchants to and from Foreign Parts, in which Caſe they ſhall pay *Aliens* Cuſtom for five Years next enſuing, and no longer.

Foreigners uſing the Trade of dreſſing Hemp or Flax 3 Years, have all the Privileges of natural-born Subjects.

Hides and Skins. See Leather.

Highways. See Scavengers.

THO' private Ways are to be repaired by the Village, and ſometimes by a particular Perſon; yet publick Ways are to be repaired by the Pariſh, unleſs ſome others in particular are thereto obliged by Cuſtom or Preſcription, and even Clergymen who are liable to all Charges impoſed by Acts of Parliament, unleſs particularly excepted, are certainly liable to repair Highways; ſo alſo, the Lands of the Church in the Hands of the Parſon are liable to be charged for the Repairs of the Highways; and 'twas ſo adjudged by *Hale*, and the whole Court, *Trin.* 27 *Car.* 2. *B. R.* 2 *Lev.* 139. 3 *Keeb.* 476. *Web* ver. *Batchelor*, *S. C.* is reported in 1 *Vent.* 273.

By whom private Ways are to be repaired. Clergy liable to repair Highways.

The Statutes which relate to Highways in general, are 2 & 3 *P. & M. c.* 8. 5 *Eliz. c.* 13. 18 *Eliz. c.* 10. 14 & 22 *Car.* 2. *c.* 2. & *c.* 12. 2 *W. & M. c.* 8. 3 & 4 *W. & M. c.* 12. 7 & 8 *W.* 3. *c.* 29. 8 & 9 *W.* 3. *c.* 16. 1 *Ann. c.* 18. 6 *Ann. c.* 29. 9 *Ann. c.* 18. 1 *Geo.* 1. *c.* 11. 1 *Geo.* 1. *c.* 52. 5 *Geo.* 1. *c.* 12.

All the Statutes relating to the Highways.

I find no Mention made in our Law-Books of Surveyors of the Highways before the 2 & 3 of King *Philip* and Queen *Mary*, *c.* 8. when a Statute was made, wherein it

2 & 3 Philip & Mary. c. 8.

was

was enacted, that the Conſtables and Church-wardens, &c. of every Pariſh ſhould yearly call together a Number of the Pariſhioners, and then elect and chooſe two within the Pariſh, to be Surveyors of the Highways for the Year following, who ſhould forthwith take that Office upon them under the Penalty of a Fine.

5 Eliz. c. 13. Surveyers have Power to turn Water Courſes.

By Stat. 5 *El.* c. 13. the Surveyors have Power to turn Water-Courſes hurtful to the Highway, into any Man's Ditch, and take the Rubbiſh ready dug; and for Default of Gravel, to dig in any Grounds except Houſes, Orchards, Gardens, and Meadows, filling up the Pits, &c. and of appointing 6 Days in the Year for the Amendment of the Highways.

18 Eliz. c. 10. Every Perſon having a Plough-Land, chargeable with a Team.

By 18 *El.* c. 10. a Cottager, if he be in the Subſidy 5 *l.* in Goods, or 40 *s.* in Land, ſhall find two able Men. Every Perſon having a Plough-Land in ſeveral Pariſhes, ſhall be chargeable with a Team or Draught in that Pariſh where he dwells: Howbeit having intire Plough-lands in ſeveral Pariſhes, he ſhall for every one of them find a Team in the ſeveral Pariſhes where they lie, altho' he be not Inhabitant there.

22 Car. 2. c. 12. Truſtees muſt let Lands moſt for the Benefit of the Highways.

By 22 *Car.* 2. *c.* 12. Truſtees of Lands given for Maintenance of Highways, &c. ſhall let them to Farm at the moſt improved yearly Rent without Fine. The Juſtices of Peace in their open Seſſions may order the Improvement and Employment thereof, (other than of Lands given to Colleges and Halls in either Univerſity having Viſitors of their own) according to the Will of the Donor; if they find that the Perſons entruſted have been faulty; and upon ſuch Orders, Appeal to Chancery lies, as to a Decree of a charitable Uſe.

The Occupiers, and where there are none, the Owners of Lands, Houſes, &c. adjoining to the Highways, Streets, &c. in the Suburbs and Liberties of *London*, Borough of *Southwark*, and City, and Liberty of *Weſtminſter*, which are, or ſhall be paved, ſhall be liable to the Scavenger's Rates, as by 14 *Car.* 2. *c.* 2. is appointed; and where any Ground lies ſo as there may be a Diſpute who ought to repair the ſame, the Juſtices of Peace in their Quarter-Seſſions ſhall determine it. *Ibidem.*

If any neglect their Labour, or to ſend their Teams.

If any fail to make their Day's Labour, or neglect to ſend their Carriages, &c. the Surveyors ſhall complain to the next Juſtices of Peace, who upon Oath thereof by one Witneſs, may levy by Diſtreſs and Sale of Goods, for every Day-Labourer without reaſonable Cauſe, 1 *s.* 6 *d.* for every Man and Horſe 3 *s.* and for every Cart with two Men 10 *s.* the Penalties to be employed for repairing the Highways. *Ibidem.* The

The King (by the Common Law) may award his Commiſſion for the amending of the Highways and Bridges throughout his Realm, ſo as the People may have ſafe Paſſages thereby. *Dalt.* 101.

We ſhall treat next, 1ſt of the Duty of Surveyors; 2dly, of the Juſtices of Peace relating to Highways.

Surveyors of the Highways how choſen, their Office and Duty, *&c.*

BUT the aboveſaid Statutes being in many Particulars defective, the Statute of 3 & 4 *W.* & *M. c.* 12. was made, whereby it was enacted, that every Year on the 26th Day of *December*, unleſs that happen on a *Sunday*, and then the Day following, the Pariſhioners muſt meet, and make a Liſt of a competent Number of Perſons thus qualified. 3 & 4 W. & M. c. 12. How Surveyors are choſen.

1. They muſt have an Eſtate of 10 *l. per Annum*, either in their own Right, or in the Right of their Wives.
2. Or they muſt be worth 100 *l.* in perſonal Eſtate.
3. Or Rent 30 *l. per Annum.*

If there are not any Perſons in the Pariſh thus qualified, then a Liſt muſt be made of the moſt ſufficient Perſons.

The Liſt muſt be returned to two or more Juſtices of the Peace near the Diviſion in which the Pariſh lieth at a ſpecial Seſſions to be held on the third Day of *January*, or within 15 Days after.

If the Conſtables neglect to return ſuch Liſt, each of them forfeits 20 *s.*

Out of this Liſt ſo returned, the Juſtices at that Seſſions do appoint one or more to be Surveyors, *&c.* by an Order under their Hands and Seals.

Within ſix Days after the Perſon thus appointed has Notice thereof given him by the Conſtable, by leaving a Copy of the Juſtice's Order at the Houſe of the Party, he muſt take upon him the Office. Within ſix Days, and Notice.

And if he refuſe after being ſo nominated and appointed, and ſerved with the Order, then he forfeits 5 *l.* to be levied by Warrant from the Juſtices of the ſame Diviſion; or in Default thereof, from the neighbouring Juſtices upon Oath made, *&c.* and one Moiety of the Forfeiture is to go to the Informer, and the other to repair the Highways; and the Juſtices may again appoint Surveyor muſt take on him the Office.

appoint one or more Surveyors, who upon Notice must take upon him or them the Office, &c. under the same Penalty.

His Duty when chosen.

Within 14 Days after the Acceptance of his Office, he must, and so from Time to Time every 4 Months, view the Roads and Bridges, &c.

He must present upon Oath to the special Sessions such Ways which are not in Repair, or he forfeits 5 *l.* unless the special Sessions shall allow his Excuse.

Every four Months must give publick Notice.

He must every four Months from Time to Time give publick Notice in the Parish Church the next *Sunday* after Sermon ended, of what Default he finds; and if not amended within thirty Days afterwards by those who ought to repair, &c. then the Surveyor must within other thirty Days next following, amend the same.

He must account upon Oath.

He must give an Account upon Oath at a special Sessions, of all Money that comes to his Hands, and how disposed, &c. and if any remains, he must deliver it to the next Surveyor, or forfeits double the Value of what the Justices shall judge in his Hands, to be levied by Warrant of two Justices, one Part to the Informer, &c.

He forfeits 40 s. for every Neglect.

For any neglect of his Duty, he is to forfeit 40 *s.* one Moiety to the Informer, the other to amend the Highways, to be levied by a Warrant from two Justices.

If he does not give an Account of what wants to be amended, forfeits 5 l.

But if he neglect to give an Account of the State and Condition of the Highways, more especially of such Faults and Defects as want to be amended, and of those who are bound to find Labourers and Teams, he forfeits 5 *l.* one Moiety to the Informer, the other to mend the Highways, unless the special Sessions allow a reasonable Excuse.

Those Ways must be first mended which Justices order.

The first seasonable Time that comes, must be taken by the Surveyors to repair the Ways, so as it may be done before Harvest, if possible, and they must repair those Ways first which the Justices in their special Sessions shall order to be repaired, if any such Order there be.

He must appoint the six Days to work on the Highways.

He is to appoint six Days for providing Materials to amend the Ways, giving Notice of the several Days by him appointed, at which Time all Persons liable must work, and the Ways must be amended before the Feast of St. *Luke*.

What Cart, &c. must be sent.

Every Person keeping a Team of Horses must send out a Cart, and two able Men, and if he keep Oxen, then he must send them out, and a Wain and two Men

to

to work eight Hours every Day ſo appointed by the Surveyor, on Pain of 10 *s.* for every Default of a Cart with two Men, and 3 *s.* for every Man and Horſe to be employed in mending the Highways, and as many Draughts as he keeps, ſo many he muſt ſend out.

If Cart, &c. are ſpared, muſt ſend out two Men.

If the Surveyors do not think all the Carriages in the Pariſh neceſſary, then the Perſon whoſe Carriage is ſpared, muſt ſend out two able Men, or forfeits 10 *s.* for every Man not ſent.

Every one obliged to work or ſend.

Every one, be he Labourer and Cottager, or Houſeholder able to labour, and being no hired Servant by the Year, ſhall by themſelves, or one ſufficient Labourer for every of them work each of theſe ſix Days, or forfeits by Stat. 22 *Car.* 2. *c.* 12. 1 *s.* 6 *d. per* Day.

Formerly 100 Acres, but now 80 Acres are deemed, but by Stat. 7 & 8 *W.* 3. 50 *l. per Ann.* is a Ploughland, as to Highways. *Raym.* 186.

Where Carts are not uſed Horſes muſt be ſent.

In ſuch Countries where Carts are not uſed, the Inhabitants muſt ſend Horſes according to the Cuſtom of the Place, with able Perſons, &c. under the like Penalty.

All Land in the Parſon's Hands, except only his Glebe is chargeable.

How the Penalties are levied.

For levying the Penalties, the Surveyor may complain to the next Juſtice, &c. who on Oath made of the Default, may ſend his Warrant to levy the Forfeitures by Diſtreſs and Sale of Goods, *viz.*

	l.	*s.*	*d.*
On a Man neglecting.	00	01	06
For every Man and Horſe, &c.	00	03	00
For every Cart with two Men.	00	10	00

For every Day they ſhall neglect, and the Penalties when levied, muſt be imployed towards the Amending the Ways.

No Buſhes, &c. muſt overhang any Highway not twenty Foot broad.

If Buſhes, Boughs, &c. grow, ſtand, or overhang any Highway not 20 Foot broad, the Owner of the Soil within ten Days after Notice given by the Surveyor, is to cut them down, or be liable to the Penalty of 5 *s.* to be levied by Diſtreſs, on Warrant of two Juſtices, on Oath of one Witneſs; one Moiety to go to the Informer, the other towards Repairing of the Ways. 3 & 4 *W.* & *M.* *c.* 12.

Every Cartway eight Foot broad, &c.

A Surveyor may make every Cart-way leading to a Market-Town eight Foot broad at leaſt, and Cauſeways for Horſes muſt be three Foot broad. *Ibidem.*

How and where Surveyors may dig for Rubbish, &c.

The Surveyors, &c. may take Stones and Rubbish already dug out of any Quarry without Leave of the Owners, and they may gather Stones in any Land without Trespass, and may dig in any Ground near the Highways, so it be not in a House, Garden, Orchard, or Meadow; and it must be but in one Pit or Hole, not above twenty Foot in Length and Breadth, which must be filled up by Order of the Surveyors within one Month, under Penalty of five Marks.

20s. Forfeiture to remove any Post, Great Stone, &c.

Those who are convicted by Oath of one Witness before one Justice of the Division, or upon his own View of pulling up, cutting or removing any Post, Block, Great Stone, Bank of Earth, or other Security of a Horse-way or Cause-way for Waggons, Carts, &c. forfeit for every Offence 20s. to be levied by his Warrant by Distress and Sale, &c. one Moiety to the Surveyors to repair the Ways, the other to the Informer.

How Surveyors are to be re-imbursed when out of Pocket, &c.

In Parishes where the Surveyors are forced to buy Sand, Gravel, or other Materials with their own Money, in order to be re-imbursed, they must attend the Justices at a Special Sessions, and swear what Money they have expended, &c. and then two Justices at the Sessions may make a Rate upon every Inhabitant, Parson, Vicar, and other Occupier of Lands, Tithes, Woods, &c. in the Parish, which Rate being allowed by the said Justices in their special Sessions, may be levied on Persons refusing to pay by Distress, &c. 3 & 4 *W. & M. c.* 12.

What those neglecting to scour Ditches, forfeit.

If those, who have Lands adjoining to the Highway, in which Ditches ought to be scoured, neglect to scour them as often as there is Occasion, and lay Trunks or Bridges where there are Cart-ways into any Ground, that the Water may have a free Passage, for ten Days after Notice from the Surveyors, they forfeit 5s. to be levied by Warrant of two Justices of the same Division, &c. upon Oath made, &c. one Moiety to the Informer, the other to amend the Ways. 3 & 4 *W. & M. c.* 12.

What they forfeit who leave Mud, &c. in Highways.

The Person who ought, and who neglects or delays for thirty Days after Notice by the Surveyor to scour and keep open his Ditches near the Highways, on Oath thereof, before the Justices at their special Sessions, forfeits 2s. 6d. for every eight Yards of Ditching not scoured and kept open, to be levied by Warrant under the Hands and Seals of the Justices in special Sessions by Distress and Sale, &c.

If

If in ſcouring the Ditches, they lay the Soil in the Highways, and ſuffer it to lie there 8 Days after Notice, they forfeit, not exceeding 5*l.* nor under twenty Shillings, to be levied, and employed as aforeſaid. 1 *Geo.* I. *c.* 48.

Surveyors have Power to turn any Spring or Water-courſe out of the Highways into thoſe Ditches, and where the Ditches already made, are not ſufficient to carry away the Water, they may make new Ditches and Drains, in and through the Lands adjoining, which they muſt keep ſcoured, and to that Purpoſe, may come with Workmen upon the ſaid Lands without being Treſpaſſers. 3 & 4 *W.* & *M.* *c.* 12.

Surveyors have Power to make Drains and Water-courſes.

All Perſons laying any thing in a Highway not twenty Foot broad, forfeit 5*s.* to be levied and employed as aforeſaid, and if Timber, Stone, Hay, Straw, Stubble, &c. or other Matter for making Dung, or on any other Pretence, be laid in any Highway, thoſe who poſſeſs Lands next adjoining, may remove and diſpoſe thereof to their own Uſe, nor can they lay Logs or Timber in the Highways, though there is ſufficient Room for Travellers left. *Ibidem.*

Owners of Land adjoining, may take Dung left in the Highway to their own Uſe.

All Matters concerning the Highways muſt be determined in the County where they lie, and not elſewhere, and no Proſecution but within ſix Months after the Offence committed. The Party grieved may appeal from any Act done by the Juſtices to the Quarter-Seſſions, whoſe Order ſhall conclude all Parties, and no Preſentment, Indictment, or Order ſhall be removed by *Certiorari*: Nor no Fine, Iſſue, Penalty or Forfeiture, for not amending Highways, ſhall be return'd into the Exchequer or other Court, but ſhall be levied into the Hands of the Surveyors, to be applied towards the Amendment of ſuch Highways. And if any Action be commenced againſt thoſe who put that Act in Execution, they may plead the general Iſſue, and give the Act itſelf, and the ſpecial Matter in Evidence; and if the Plaintiff be nonſuited, diſcontinue, or a Verdict againſt him, the Defendant ſhall have double Coſts. 3 & 4 *W.* & *M.* *c.* 12.

By Stat. 7 & 8 *W.* 3. *c.* 29. Surveyors compounding with, or receiving any Reward whatſoever of Offenders againſt that, or any other Act about Highways, by way of conniving at, or overlooking ſuch Offences, forfeit 40*s.*

If any Surveyor of the Highways neglect to erect or fix a Stone or Poſt, where two or more Croſsways meet, with an Inſcription thereon in large Letters, contain-

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If any Surveyor of the Highways neglect to erect or fix a Stone or Poſt, where two or more Croſsways meet, with an Inſcription thereon in large Letters, contain-

Surveyors neglecting to fix a Stone or where Croſsways meet.

containing the Name of the next Market-Town, to which each of the adjoining Highways leads, according to the Precept to him directed by the Juſtices at their ſpecial Seſſions for the Highways, he forfeits 10s. to be levied by Warrant from one Juſtice, and employed towards erecting ſuch Stone or Poſt, and the Overplus (if any) in repairing the Highways. Stat. 8 & 9 *W.* 3. *c.* 16.

The Form of a Preſentment of a Highway out of Repair made by a Surveyor.

I A. B. *Surveyor of the Highways of, and within the Pariſh of*, &c. *in the County of*, &c. *do hereby preſent that the Highway leading from*, &c. *to* &c. *in the ſaid Pariſh, is very much out of Repair, and dangerous to all Travellers who paſs that Road, and that the Inhabitants of the ſaid Pariſh of*, &c. *ought of right to repair and amend the ſame.*

I do alſo preſent upon Oath, that C. D. *of the Pariſh of*, &c. *has lately laid ſeveral great Logs and other Timber in the ſaid Highway, to the great Annoyance thereof*, &c.

The Power and Duty of Juſtices of Peace about Highways.

BY Stat. 1 *Geo.* 1. *c.* 48. The Juſtices of the Diviſion are to hold a ſpecial Seſſions in the Diviſion, &c. every Year on the third of *January*, or within fifteen Days after, of which they are to give Notice ten Days before they hold the ſame, to every Conſtable within the Diviſion.

The Juſtices Precept to the Conſtables to bring in a Liſt of Perſons fit to ſerve as Surveyors.

THeſe *are to give you Notice, that on* Monday *the* 3d *of* January *next, at the Houſe of*, &c. *there will be a ſpecial Seſſions held for putting the Acts of Parliament in Execution relating to the Repairing the Highways, when and where you are hereby required perſonally to be and appear, and to bring with you a Liſt of the Names of the Perſons within your Pariſh fit to be Surveyors of the Highways for the Year enſuing,* (viz.) *ſuch as have an Eſtate of* 10l. per Ann.

Ann. *have a perſonal Eſtate to the Value of* 100*l. or as do rent* 30*l. a Year; and if you have not any ſuch, a Liſt of the Names of the moſt ſufficient Perſons in your ſaid Pariſh, according to the Direction of the Acts of Parliament in that Caſe made*, &c.

They are to nominate under their Hands and Seals, out of the Liſts brought unto them, one or more Surveyors of every Pariſh within the Diviſion for the Year enſuing, and upon the Refuſal of the Party ſo nominated, and paying the Forfeiture of 5*l.* by Warrant granted upon Oath of one credible Witneſs, then they are to nominate ſome other fit Perſon. 1 *Geo.* 1. *c.* 48.

An Appointment of a Surveyor of the Highways by Juſtices of Peace.

At a ſpecial Seſſions held for the Highways on, &c.

WE, whoſe Names are hereto ſubſcribed, being his Majeſty's Juſtices of the Peace in the County of, &c. *do hereby appoint* A. B. *of*, &c. (*one of the Perſons mentioned in a Liſt this Day, returned to us by*, &c. *Conſtable of*, &c. *Surveyor of the Highways, in the Pariſh of*, &c. *aforeſaid, for and during the Space of one whole Year next enſuing, the Date hereof according to the Form of the Statute in that Caſe made and provided.* Given, &c.

Two Juſtices may allow a Surveyor's Excuſe.

Two of them may allow a reaſonable Excuſe of a Surveyor, not viewing or not preſenting every four Months in what Condition the Ways are.

If Surveyor after Notice doth amend the Roads, he is to be repaid.

If Notice is given on *Sunday* after Sermon next, after any Default found, if within thirty Days after ſuch Notice, the Party who ought to amend it, neglect ſo to do, and if the Surveyor within thirty Days afterwards doth amend it, and the Party neglecting refuſeth to pay the Charges, then upon Oath made of Notice, &c. as aforeſaid, the Surveyor ſhall be repaid ſuch Charges as the Juſtice ſhall think fit, which is to be levied by his Warrant, &c.

Juſtices are to hold a ſpecial Seſſions every four Months.

They are to hold a ſpecial Seſſions once in four Months, and ſummon the Surveyors thereunto, and to tell them what they are obliged to do; and at this Seſſions the Juſtices may by Writing under their Hands and Seals, order the Reparation of thoſe great Roads which do moſt want Repairing in that Hundred, where

the Seſſions is, which ſhall be firſt repaired, and in what Time and Manner.

May examine on Oath touching Money for Repairs.

They may likewiſe at this Seſſions examine on Oath any Perſon who can give an Account of Money which ought to be applied for mending the Highways, and levy the Penalties, and diſpoſe of the Forfeitures, one Moiety to the Surveyors of the Highways where the Offence was done, towards the Repairs thereof, and the other to the Informer.

May make a Rate to repay any Perſon on whom Fine has been levied.

If any Fine or Forfeiture impoſed on any Pariſh, be levied upon any particular Inhabitant, then upon Complaint thereof to the Juſtices at the ſpecial Seſſions, they or two of them may by their Warrant cauſe a Rate, to be made to repay that Perſon or Perſons, which Rate the Surveyors ſhall levy and pay within a Month after the Making thereof.

1 Geo. 1 c. 48. Notwithſtanding the 6 Days Work hath been perform-ed.

The Juſtices in their Quarter Seſſions not being ſatisfied that the Ways can be amended without the Help of the Act of 3 & 4 *W. & M. c.* 12. may cauſe Aſſeſſments to be made on every Perſon uſually ratable to the Poor not exceeding 6 *d.* in the Pound for the yearly Value of the Lands, nor of 6 *d.* for every 20 *l.* perſonal Eſtate: Theſe Aſſeſſments muſt be made, and levied by ſuch Perſons, and in ſuch Manner as the Juſtices in their Seſſions ſhall direct and appoint, and the Money muſt be employed according to their Order for repairing of the High-ways; and if not paid within ten Days after Demand, may be levied by Diſtreſs, notwithſtanding the 6 Days Work hath been perform'd.

Any Perſon grieved by ſuch Aſſeſſment, may Appeal to the Quarter-Seſſions, whoſe Order ſhall be final.

Next Quarter-Seſſions may make what Order they think fit.

The next Quarter-Seſſions may make ſuch Order as they ſhall think fit where any Perſon finds himſelf aggrieved by any thing done in Execution of the Stat. 1 *Geo.* 1. *c.* 48. except for the Neglect of ſcouring Ditches, and carrying away the Soil taken out of the ſame, or who ſhall not carry away Stone, Timber, Straw, or Dung left in the Highways, or not remove any other Annoyances by Water-courſes, &c.

3 & 4 W & M. c. 12.

The Juſtices of *Middleſex* may at their Quarter-Seſſions, make Rates for paving *Kenſington*, &c.

Juſtices neglecting their Duty, forfeit 5 *l.*

The Juſtices negleſting or refuſing to do what is required by the Act, forfeit 5 *l.* one Moiety to the Proſecutor to be recovered by Action of Debt in any of the King's Courts of Record, the other Moiety to be employed to amend the Highways where the Proſecutor liveth.

The

The Quarter-Sessions may appoint Scavengers, and order the Repairing and Cleansing the Streets in any City or Market-Town, and may appoint Persons to make Assessments on every Owner and Occupier of Lands and Houses equally, not exceeding 6 *d. per* Pound *per Ann.* to defray the Charges of such Scavengers, which Assessment being allowed under the Hands and Seals of the Justices, &c. may be collected by such Persons as they appoint, and be levied by their Warrant on the Goods of those who shall not pay it within eight Days after Demand, and the Money thus raised, shall be employed and accounted for, according to the Direction of the Justices for repairing and cleansing the Streets. 1 *G.* 1. *c.* 52.

Quarter-Sessions may appoint Scavengers in Cities or Market-Towns.

The Servants or Clerks of the Justices at their special Sessions, shall not take any thing of a Surveyor for his Oath, or his Accompt given in to them upon the Forfeiture of 10*l.* to be recovered in any Court of Record. *Ibidem.*

Justices Clerks to take no Fees of Surveyor.

Any Justice may upon his own Knowledge present at the general Sessions any Offence concerning Highways, upon which the Court may assess a Fine, tho' the Offender is absent, which Fine shall not be taken off, unless the Party presented do certify the Amendment of the Ways, by 2 & 3 *P. & M. c.* 8. and 5 *Eliz. c.* 12. also he may present Defaults of Surveyors, and of all others relating to the Highways, &c.

Justice may present on his own Knowledge, &c.

The Form of which Conviction is as followeth.

Essex, ss. MEmorand' quod J. S. de, &c. un' Justiciar' Dom' Regis ad pacem in Com' pred' conservand' nec non ad diversas Felonias & Transgressiones & alia malefacta in eodem comitatu perpetrat' audiendum & terminand' assign' ad hanc Generalem Sessionem, Pacis Com' pred' tent' apud Chelmsford, infra Com' pred' 22 die Octob. Anno Regni, &c. coram A. B. &c. Justiciariis Pacis in Com' predict' virtute Statut' Dom' Elizabethæ nuper Regine Anglie in Parliamento tent' apud Westmon' 12 die Januarii, Anno Regni sui Quinto & secundum formam & effectum dict' Statut' intitulat' (an Act for the reviving of a Statute made, Anno 2 & 3 P. and M. c. 8. for the mending of the Highways) super prefatam notitiam suam presentavit quod quedam Communis & Antiqua Regia via infra Parochiam

rochiam de M. in Com' pred' que ducit de Parochia pred' ad villam de Lin' Com' pred' (Mercatoria Villa existen') a quodam loco vocat', &c. in Parochia de M. pred' usque quendam locum, &c. in Parochia de M. pred' non est bene & sufficienter reparata & emendata secundum formam & effectum Statut' pred' sed modo est in magno decasu ita quod subditi dict' Dom' Regis per viam pred' cum Equis Plaustris Carucis & Carriagiis & aliis necessariis suis prout solebant & debent absq; magno periculo transire seu laborare non possint in cujus rei Testimonium pred' J. S. manum & Sigillum suum apposuit.

The Order thereon is as followeth.

SUper quo ad eandem Generalem Sessionem Pacis, ibidem tent' die & Anno supradictis pred' Justiciarii Dom' Reg' ad pacem dicti Dom' Reg' in Com' pred' conservand' Assign' assessaverunt & imposuerunt finem 20 l. levand' de Inhabitantibus dict' Parochie de M. in quorum defectu via pred' non est sufficienter reparata secundum formam Statut' pred' si pred' via non est sufficienter reparata & emendata ante Festum Sancti Johannis Baptistæ prox' futur'.

Such a Conviction not traversable.

N. B. That upon such a Conviction the want of Repairs of the Highways cannot be traversed, but the Defendant may plead that some other Person ought to repair, and traverse that he ought not.

Justice may present Officers not accounting.

Every Justice knowing that any Officer has received Estreats for levying Forfeitures, *&c.* and neglected or not accounted, and paid it between the first Day of *March* and the last Day of *April* to the Constables, &c. may present it.

Two Justices (Quorum unus) may take the Account of a High-Constable.

Two Justices (*Quorum unus*) may take the Account of a High Constable, and may compel him to pay the Fine levied to the Petty Constable, or commit him; but then he is to be allowed 8 *d. per* Pound for collecting, and 12 *d.* for the Fee of the Estreat. And any one Justice on Complaint may compel those who have been Constables, to pay the Arrears of Money by them levied on Estreats.

One Justice may commit Persons resisting.

One Justice of Peace upon his one View, or upon Conviction by the Oath of one Witness, may commit him who resists any Person employed to put the Acts concerning Highways in Execution, or of rescuing Goods distrained until he pay 40 *s.* to the Surveyor,

if he refuſe to pay the ſame within ſeven Days after the Notice of ſuch Conviction. 22 *Car.* 2. *c.* 12.

In whoſoever's Ground or Side a Hedge ſhall be, to the Owner of that Land belongs the keeping the ſame Hedge, and alſo the Ditch adjoyning and belonging to it on the other ſide in Repair, and ſcoured. Hedge and Ditch belong to the Owner of the Land, &c.

The Soil of Highways publick or Private, belongs to him on whoſe Land it is on each Side of it. *Berry* ver. *Goodman.* 2 *Leon.* 148.

By Stat. 8 & 9 *W.* 3. *c.* 15. five Juſtices at Quarter-Seſſions have a Power of enlarging Highways, not to take in above eight Yards in Breadth. No Power to pull down any Houſe, or take away the Ground of any Garden, Orchard, Court or Yard. Juſtices may impanel a Jury who muſt take an Oath, that they will aſſeſs ſuch Damages to the Perſon whoſe Ground is taken, as they ſhall think reaſonable, not exceeding Twenty-five Years Purchaſe, beſides reaſonable Recompence for a new Ditch and Fence to that ſide of the Way that ſhall be ſo enlarged, and alſo Satisfaction to any other Perſon injured by, &c. five Juſtices may Order one or more Aſſeſſments to be made on the Inhabitants of the Pariſh, who ought to repair; the ſame Money raiſed to be accounted for, and employed according to Juſtice's Order towards purchaſing ſuch Lands, &c. and enlarging Highways, &c. on Refuſal of Payment in ten Days of aforeſaid Rates, Overſeer by Juſtice's Order may levy by Diſtreſs, &c. no Aſſeſſment to exceed 6 *d. per* Pound in one Year. Juſtices to give Notice to Owners of the Ground, to appear at Seſſions, and ſhew Cauſe why Ways ſhould not be enlarged. Perſon aggrieved may appeal to Judge of Aſſize, at the next Aſſize only, who may affirm or reverſe the ſame; and if they ſee cauſe to affirm to award Coſts againſt the Appellant. And after an Order is made for the laying out of Ground for enlarging Highways, the Owner hath Liberty in 8 Months after to cut down any Wood or Timber growing upon the ſaid Ground; or upon neglect, the Juſtices ſhall ſell it, and deliver to the Owner the Value. Highways encloſed after a Writ *ad quod damnum*, &c. Perſons aggrieved by ſuch Encloſure, may appeal to Quarter-Seſſions next after ſuch Inquiſition who have a Power finally to determine ſuch Appeal. 8 & 9 *W.* 3. *c.* 15. Five Juſtices at Quarter-Seſſions have Power of enlarging Highways.

By Stat. 6 *Ann. c.* 29. No Cart or Carriages, except for Husbandry, manuring of Land, Hay, Straw, * Corn, Coal, Chalk, Timber for Shipping, Materials

* Are excepted by 1 Geo. 1. c. 11.

With what Number of Horſes, &c. Carriages muſt be drawn, &c.

for building Stones of all ſorts, or Ammunition, &c. for His Majeſty's Service, ſhall be drawn with above ſix Horſes, on Forfeiture of 5 *l.* to the Amending the Ways, and the Informer; Penalty to be levied by Diſtreſs of all, or any of the Horſes, &c. by Warrant from one Juſtice, if not paid in three Days to ſell the ſame, rendring Overplus, Charges firſt deducted. Surveyor neglecting to put the Act in Execution, forfeits 5 *l.* 6 *Ann. c.* 29.

By Stat. 9 *Ann. c.* 18. 'Tis enacted, that any Perſon may diſtrain or ſeize Horſes, Oxen or Beaſts drawing with more than 6 Horſes (againſt the Stat. 6 *Ann. c.* 29.) and deliver them to the Surveyor, or other Pariſh Officer of the Place where the Offence ſhall be committed: And if the Penalty of 5 *l.* inflicted by that Act is not paid in three Days, the Surveyor or other Pariſh Officer, may by a Warrant of one Juſtice, ſell the Diſtreſs, and deliver the Money to the Juſtice, who muſt diſtribute it * as by that Act is directed.

* One Moiety to the Surveyor, the other to the Proſecutor.

The Perſon ſeizing, &c. but neglecting to bring the Cattle to the Surveyor or Pariſh Officer, forfeits 20 *l.* to be levied by Warrant of one Juſtice by Diſtreſs and Sale, &c. and for want thereof to be ſent to the Gaol 'till paid, one Moiety to the Repairs of the Highways, the other to the Informer; the Surveyor neglecting to deliver the Sum by him received to the Juſtice, forfeits 20 *l.* to be levied as aforeſaid.

Perſon ſeizing, neglecting to bring Cattle to the Surveyor, forfeits 20 l.

Any Perſon employed by a Carrier or another, and ſubject to the Penalties in that Act, and driving or aſſiſting to drive any travelling Waggon or Cart with more than ſix Horſes, &c. ſhall forfeit 5 *l.* to be levied and diſpoſed as aforeſaid.

Perſon employ'd by a Carrier, forfeits 5 l.

And where ſix Horſes, &c. are not ſufficient to draw up Hill, or out of any foul Way, any Perſon may by Conſent of the Owner or Driver, &c. add more Horſes, &c. from any other Cart or Waggon on the Road. 9 *Ann. c.* 18.

May add more Horſes from other Waggon, &c. on the Road to help up Hill, &c.

By Stat. 5 *Geo.* 1. *c.* 12. No Waggon travelling for Hire, ſhall be drawn with more than ſix Horſes, either in Length, or in Pairs, or Side-ways; no Cart travelling for Hire, ſhall be drawn with more than three Horſes, on Forfeiture of all the Horſes above ſix in the Waggon, with all the Furniture belonging to the ſaid Horſe or Horſes, and all the Horſes above three in the Cart, &c. by Owner or Driver, for the Uſe of the Perſon ſeizing the ſame; who muſt deliver ſuch Horſe or Horſes to the Conſtable, or other Pariſh Officer of the ſame, next or adjacent Town where ſeized, who is to

If Waggon is drawn with more than ſix, or Cart with more than three Horſes, any Perſon may ſeize all above that Number.

to keep the ſame 'till the Perſon making the Seizure, hath made Proof upon Oath, before any one Juſtice, of the Offence committed; which ſaid Juſtice ſhall iſſue his Precept to the Conſtable, or, &c. to deliver the Horſe, &c. forfeited to the Party or Parties who ſeized the ſame, paying ſuch reaſonable Charge for keeping the ſame, as the ſaid Juſtice ſhall allow.

No Waggon travelling for Hire, having the Wheels bound with Streaks, or the Tire of a leſs Breadth than two Inches and a Half when worn, or being ſet or faſtned on with Roſe-headed Nails, ſhall be drawn with more than three Horſes, on Forfeiture of all the Horſes above three, by the Owner or Driver, together with their Furniture, to be ſeized and recovered as aforeſaid: Any Perſon by Force, or otherwiſe, hindring or endeavouring to hinder ſuch Seizure, on Proof made of it on Oath by one Witneſs, before one Juſtice, ſhall for the ſaid Offence be committed to Gaol for three Months without Bail or Mainprize, and ſhall forfeit 10*l.* to be levied by Diſtreſs by Warrant from the ſaid Juſtice; if Money not paid in three Days, Sale, rendring Overplus to the Owner, after Charges deducted; not to extend to Carts and Waggons employed about Husbandry, manuring Land, carrying of Cheeſe, Butter, Hay, Straw, Corn unthreſhed, Coals, Chalk, or any one Tree or Piece of Timber, or any Stone or Block of Marble.

N. B. The Forfeiture the ſame, if the Streak or Tire be of greater Breadth, if faſtned on with Roſe-headed Nails.

Caravans covered, Carriages of Noblemen and Gentlemen for their own private Uſe; or ſuch Timber, Ammunition, or Artillery for His Majeſty's Service, His Heirs and Succeſſors, are excepted. If any Action commenced, and Plaintiff diſcontinue his Suit, or be nonſuited, or Judgment given againſt him, Defendant ſhall recover full Coſts of Suit. *5 Geo.* 1. *c.* 12.

To what this Statute is not to extend.

By *Stat. 6 Geo.* 1. *c.* 6. No Perſon ſhall carry in the City of *London* and *Weſtminſter*, or within ten Miles thereof, in Carts or Waggons, having their Wheels bound with Iron at any one Load, more than ſeven Hundred and a Half of Bricks, one Chalder of Coals, twelve Sacks of Meal, of five Buſhels to the Sack, and twelve Quarters of Malt, on Forfeiture of one of the Horſes, with the Gear, Furniture, &c. to any one who ſhall ſeize the ſame in ſuch Manner as the Penalties are directed, to be levied and applied by the *Stat.* 5 *Geo.* 1. *c.* 12. relating to Carriages drawn on the Highways.

What Weight Carts or Waggons are to carry in London and Weſtminſter, or ten Miles thereof.

Oath is to be made of the Offence before a Juſtice of Peace, who on Conviction is to order the Forfeiture to the Seizor, &c. Per-

Persons who are bound to repair the Pavements before their own Houses at their own Costs, are also obliged to contribute to the Payment of the Scavengers Rates; for as to their paving before their own Doors they have the principal Benefit of it, and that is no Reason to excuse them from parochial Duties. 5 *Mod.* 68. 1 *Salk.* 356.

Justices must particularly express what Days are appointed for working on the Highway.

Justices of Peace must particularly express what Days are appointed for working on the Highways, and not appoint six Days generally between such a Time and such a Time. On Indictment for not working towards the Reparation of the Highways, according to the Statute, setting forth that six Days *inter* such a Time and such a Time were limited, and the Defendant did not work upon any of the Days, the Indictment held naught, for the particular Days ought to be set forth. 1 *Salk. Rep.* 357. *Pasch.* 2 *Ann.* B. R.

Where a Way is foundrous, Passengers may break into Lands adjoyning, tho' sown with Corn.

If a Way be foundrous, and there be Outlets from the Land adjoyning, the People may travel upon the Soil, though sown with Corn; and if a Way be thro' a Man's Lands and he fences it in, he by that hath bound himself to repair the Highway, tho' the Parish did it before; but if he lay it open again, then is he no longer obliged to repair it. 1 *Cro.* 366. *Trin.* 10 *Car. Duncomb's* Case. *Roll's Abridgm.* 390. *Saund.* 160.

The Parish liable to be indicted where the Ways are foundrous, notwithstanding they work the whole six Days.

N. B. It is not enough for Parishioners to work the full six Days yearly on the Highways, except that thereby the Ways are sufficiently repaired; for if they be not, the whole Town may be indicted; and a Highway lying out of any Parish, ought to be repaired by the whole County.

On an Information in the Crown-Office for not repairing an Highway, they say one Part of the Parish ought; by the Chief Justice, you may plead Not-guilty, and give in Evidence that Part of the Parish that ought to Repair.

If a Manor be held by the Service or Tenure of repairing a common Highway or Bridge, and that Manor afterwards comes to be divided into several Hands, every one of the Alienees being Tenants of any Parcel, either of the Demesnes or Services, shall be liable to the whole Charge, and are contributary among themselves. And though the Manor, subject to such Charge comes to the Crown, yet the Duty upon it still continues; and all claiming under the Crown afterwards shall be liable to Indictment or Information for want of Repairs. *Salk.* 358.

It

It is not juſtifiable to ſtop one Way (which was bad) and lay out another (without Authority) 1 *Cro.* 266. *Pop.* 142. Style 130. Moore 180. Co. 9 Rep. f. 33.

An Action for ſtopping or incroaching upon an Highway, is not maintainable without particular Damage, and the uſual way is by Indictment. Keilway 53. 2. Pl. 4. Trin. 22 Ca. 2.

If a Man be obliged to repair the Highway *ratione tenuræ* of certain Lands, although he lay thoſe Lands open to the ſaid Way, he continues ſtill liable to repair it. *Trin.* 21 *Car.* 2. *Roll.* 406. 2 *Saund.* 160, 161. 1 Sid. 400, 464, 469. 2 Sand. 160.

By *Hale*, Chief Juſtice, if a Way lead to a Market, and were a Way for all Travellers, and does communicate with a great Road, *&c.* it is an Highway; but if it leads only to a Church, to a private Houſe or Village, or to Fields, there 'tis a private Way; but 'tis a Matter of Fact, and much depends upon common Reputation. 1 *Vent.* 189. What is a Highway.

An Indictment will not lie for a common private Way, but an Action on the Caſe. 2 *Vent.* 208.

N. B. No Ways are properly under the Cognizance of the Surveyors of the Highways, unleſs they are common Highways.

He that hath a Plough-Land, though he hath no Plough, but doth ſuffer his Land to lie freſh, yet he is to find a Team for this Work, and ſo it hath been agreed by the Judges. *Mich.* 21 *Jac.* 1.

Diſtreſs for Rent-Service cannot legally be made in the Highway, by Stat. *Marlb. c.* 75. 3 *Cro.* 710. and where a Lord of a Manor diſtrains in the Highway, the Tenant may have an Action of Treſpaſs, or make Reſcous. 17 *E.* 3. *c.* 1. *&c.* and there can be no Preſcription againſt a Statute. 9 *H.* 6, 56, *&c.* Diſtreſs for Rent can't be made in the Highway.

Statutes which concern Highways and Bridges in particular Places.

BEdford, 5 *Ann.* 8 *Ann.* 9 *Ann.* 12 *Ann.* 3 *Geo.* 1. 9 *Geo.* 1. 11 *G.* 1. 13 *G.* 1.

Berks, 12 *Ann.* 4 *Geo.* 1. 12 *G.* 1. 1 *G.* 2. 3 *G.* 2.

Bucks, 7 *Geo.* 1. 13 *G.* 1. 1 *G.* 2.

Cambridge, 35 *H.* 8. *c.* 15. 15 *Car.* 2. *c.* 4 *&* 5 *W. & M. c.* 9. 10 *&* 11 *Geo.* 1. 13 *G.* 1. 3 *G.* 2.

Cardiffe, 23 *Eliz. c.* 11.

Carleon, 23 *Eliz. c.* 11. 39 *Eliz. c.* 23.

Chepſtow, 3 *Jac.* 1. *c.* 23.

Cheſter, 37 *H.* 8. *c.* 3. 4 *&* 5 *Ann. c.* 29. 4 *G* 2.

Chicheſter, 18 *Eliz. c.* 19.

Cumberland, 43 *Eliz. c.* 16. 11 *G.* 1.

Dor-

Dorſet, 1 *Mar.* c. 5.

Eſſex, 7 & 8 *W.* c. 9. 1 *Ann.* c. 10. 8 *Geo.* 1. 10 *Geo.* 1. 12 G. 1.

Glouceſter, 9 & 10 *W.* c. 18. 12 *W.* 3. c. 9. 9 *Geo.* 1. 11 G. 1. 13 G. 1. 3 G. 2. 4 G. 2.

Hereford, 39 *Eliz.* c. 24. 7 *Geo.* 1. 13 G. 1. 2 G. 2.

Hertford, 15 *Car.* 2. c. 1. 16 & 17 *Car.* 2. c. 10. 10 *Ann.* 4 & 5 *W.* & *M.* c. 9. 5 *Ann.* c. 11. 7 *Geo.* 1. 9 *Geo.* 1. 12 G. 1. 3 G. 2.

Huntington, 4 & 5 *W.* & *M.* cap. 9. 9 *Ann.* 12 *Ann.* 13 G. 1. 1 G. 2.

Ipſwich, 13 *Eliz.* c. 24.

Kent, 15 H. 8. c. 5. 26 H. 8. c. 7. 18 *Eliz.* cap. 10. 27 *Eliz.* cap. 26. 39 *Eliz.* cap. 19. 8 *Ann.* 11 *Ann.* 10 & 11 *Geo.* 1. 1 G. 2. 3 G. 2.

Lancaſter, 11 G. 1. 13 G. 1. 3 G. 2. 4 G. 2.

Leiceſter, 12 G. 1.

London, 24 *H.* 8. cap. 11. 25 H. 8. cap. 8. 32 H. 8. c. 17. 34 H. 8. c. 12. 13 *Eliz.* c. 23. 23 *Eliz.* c. 12. 19 *Car.* 2. c. 3. 22 & 23 *Car.* 2. c. 17. 3 & 4 *W.* & *M.* c. 12. 5 *Ann.* c. 12. 1 G. 2.

Middleſex, 10 *Ann.* 11 *Ann.* 12 *Ann.* 1 *Geo.* 1. c. 37. 3 *Geo.* 1. 7 *Geo.* 1. 8 *Geo.* 1. 10 & 11 *Geo.* 1. 11 G. 1. 12 G 1. 1 G. 2. 2 G. 2. 4 G. 2.

Newport, 23 *Eliz.* c. 11. 39 *Eliz.* c. 23.

Norfolk, 27 *Eliz.* c. 24. 7 & 8 *W.* c. 26. 7 *Ann.* 10 *Ann.* 10 *Geo.* 1. 12 G. 1.

Northampton, 8 *Ann.* 11 G. 1.

Nottingham, 12 G. 1.

Oxford, 18 *Eliz.* c. 20. 5 *Geo.* 1. 3 G. 2.

Rocheſter-Bridge, 18 *Eliz.* c. 17. 27 *Eliz.* c. 15.

Salop, 12 G. 1.

Somerſet, 1 *Mar.* c. 5. & 6 *Ann.* 7 *Geo.* 1. 3 G. 2.

Southampton, 9 *Ann.* 4 *Geo.* 1. 12 G. 1.

Stafford, 12 *Ann.* 13 G. 1. 2 G. 2.

Suffolk, 10 *Ann.*

Surrey, 39 *Eliz.* cap. 19. 8 & 9, 10 *W.* 3. cap. 15. 4 *Geo.* 1. 10 *Geo.* 1. 1 G. 2.

Suſſex, 15 H. 8. c. 6. 26 H. 8. c. 7. 39 *Eliz.* c. 29. 4 G. 1. 10 G. 1. 4 G. 2.

Warwick, 10 *Geo.* 1. 11 G. 1. 12 G. 1. 3 G. 2.

Wilts, 5 *Ann.* 12 *Ann.* 4 *Geo.* 1. 11 G. 1. 12 G. 1. 13 G. 1. 2 G. 2.

Worceſter, 12 *Ann.* 12 G. 1, 13 G. 1. 1 G. 2.

York, 11 G. 1. 12 G. 1. 13 G. 1.

As to Indictments about Highways, they are either: 1. For obſtructing or ſtopping a Way, or 2. For not repairing. 3. For Nuſance: Or 4. For not working on them.

1. For

1. For obſtructing or ſtopping a Way.

An Indictment for ſtopping the King's Highway in *Kenſington*, good without ſaying from ſuch a Place, to ſuch a Place, otherwiſe of a common Way. *Noy* 90. 2 *Saund.* 157.

An Indictment for ſtopping a Way to a Church, without ſaying *Communis via* good. *Poph.* 206. 2 *Saund.* 157. *Latch* 185.

It was my Lord *Hale*'s Opinion, that every Inhabitant of the Pariſh may have an Action upon the Caſe for ſtopping the Way to the Church.

An Indictment againſt Lord of a Manor ſtopping of a Highway in his own Lands, is good without laying the Offence done, *vi & armis.* Poph. 206.

For ſtopping *quandam partem Aquæ*, it was quaſhed, for it ſhould have been *terram aqua coopertam.* A Man was indicted for ſtopping *communem viam pedeſtrem ad Eccleſiam de H.* and it was held, if the Way had been alledged to be *pro Parochianis*, it had made the Indictment ill; for then the Nuſance would extend no farther than the Pariſh, and every Pariſhioner might have an Action; but it was laid *ad commune nocumentum*; and in ſuch Caſe the Church ſhall be only intended the *Terminus ad quem.* 2 *Co.* 524. 1 *Vent.* 238. 2 Cro. 524. 1 Vent. 238.

Where the Defendant pleaded, that he laid out a more commodious Way, and that before it was done he brought a Writ of *ad quod damnum, &c. viz.* Whether it ſhould be a Damage if the King ſhould give a Licenſe to ſtop up the old Way; and upon the Inquiſition taken, it was found that 'twas no Damage. Ad quod damnum pleaded.

This was held no good Plea, becauſe he did not plead that he had obtained the King's Licenſe; neither did he ſet forth by what Authority he laid out the Way; for 'tis but at his Pleaſure, and he might ſtop it when he would. *Cro. Car.* 266.

An Indictment for ſtopping *quandam partem Viæ Regiæ apud G.* is not good without alledging how much in Breadth and Length. *Roll. Abr.* 2. *part* 81. but you muſt not ſay *per æſtimationem*, for that is uncertain. Indictment to ſpecify how much of the Way is obſtructed.

The Word (Divert) not being a Term proper and applicable to a Way which may be obſtructed, but cannot be diverted, therefore a Preſentment in a *Leet* for diverting a Way is void. (Divert) no proper Term for a Way.

An Indictment for ſtopping a Way *valde neceſſariam* for the Subjects, quaſhed, becauſe it did not alledge it to be *Regiam viam.* 4 *Leon.* 121. 4 Leon. 121.

The

Cro. Eliz. 148. 1 Vent. 4.

The like for alledging it to be *ad nocumentum diversorum, &c.* it ſhould be of all the People. *Cro. Eliz.* 148. 1 *Vent.* 4.

The Information was for ſtopping, and the Evidence was, that he ploughed it, and held good.

2*dly*, For not repairing the Highways.

On not Guilty the Decay only comes in Queſtion.

Upon not Guilty pleaded, the Decay only comes in Queſtion, for if another Perſon ought to repair, it muſt be pleaded. *Paſch.* 26 *Car.* 2. *per Hale.*

Non debet reparare is a bad Iſſue, but yet if found for the Defendant, and not who ought to repair, he ſhall be acquitted, tho' no Judgment can be given upon ſuch a Verdict. *Sid.* 140.

A Preſcription to repair *ratione tenuræ* is not good, becauſe it ought to be by Cuſtom which is local, *viz.* that in ſuch a Place, there has been a Cuſtom Time out of Mind, *&c.* to repair. *Sid.* 464. *Style* 400.

Latch. 206. 1 Vent. 331.

Where a Man is indicted for not repairing *ratione tenuræ*, omitting the Word *ſuæ*, 'tis well enough, for the Forms are both ways, and in the later Indictments the Word *ſuæ* is often left out. *Latch* 206. 1 *Vent.* 331.

How a Perſon makes himſelf liable to repair an Highway.

When a Perſon by any Encloſure ſtraitens a Highway on both ſides, tho' the Pariſh repaired it before, yet now he is obliged to maintain it at his own Charge; but if he abates the Encloſure, and leaves the Way open as it was before, then the Pariſh is to repair it again. *Cro. Car.* 366. *Saund.* 160. *Roll's* Abridg. 390. *Trin.* 10 *Car. Duncumb's* Caſe.

Tho' the King have granted before 2 & 3 *Ph. & M.* that Lands ſhall be exempted from repairing, *&c.* Yet that is not a good Diſcharge for the Land. 3 *Mod.* 96.

Highway is to be repair'd by the Pariſh.

A Highway is that which leads from one Market Town to another, and is to be repaired of common Right by the Pariſh where the Decay is, unleſs ſome other Perſon is bound by Preſcription or Cuſtom, and therefore *reparare debet* generally, without ſhewing how, is not good.

Sid. 140. 1 Vent. 256. If Pariſh have Matter to diſcharge themſelves, muſt plead it.

But if the Defendant pleads *reparare non debet*, and 'tis ſo found, he ſhall be acquitted, tho' it doth not appear who ſhould repair, and the Reaſon may be becauſe *de communi jure* the Pariſh is bound to repair their own Highways, and therefore they are never allowed to plead not guilty, and give in Evidence that another ought to repair by Preſcription or Tenure, for if they would diſcharge themſelves, they muſt plead it. *Sid.* 140. 1 *Vent.* 256.

A com-

A common Way is that which leads from a Village or Town, to the Pariſh Church or Fields; 'tis alſo called a private Way, and is to be repaired by the Village or Hamlet, and ſometimes by a private Perſon, if ſuch a Way be out of repair, every Inhabitant may have an Action, but an Indictment will not lie. 4 *Vent.* 208.

How a private Way is to be repaired.

But a Hamlet within a Pariſh cannot be charged generally to repair without Preſcription, &c. *Style* 163.

Indictment for not repairing a ruinous Houſe ſtanding on the Highway, and likely to fall; and this was brought againſt a Tenant at Will and alledged, that he was bound to repair *ratione tenuræ*; *ſed non allocatur*; for the Occupier is anſwerable to the Publick, who are to look to him, and not to what Eſtate he hath in the Houſe.

If the Inhabitants of a Pariſh are indicted for not repairing a Way, and they ſubmit to a Fine, and pay it. This is not enough, for Writs of *Diſtringas* ſhall be awarded *in infinitum* till 'tis repaired.

Tho' a Pariſh pays a Fine, 'tis not enough unleſs the Way be repaired.

If the Defendant before Verdict brings a Certificate that the Way is repaired, then he may ſubmit to a Fine, but after a Verdict ſuch Certificate will not do, becauſe the Conviction being upon Record muſt be anſwered by Matter of as high a Nature, and that muſt be a *Conſtat* to the Sheriff, who may return that 'tis amended. *Raym.* 215.

Where a Conſtat is neceſſary.

Many Indictments were exhibited ſeverally againſt ſeveral Men, becauſe each by himſelf ſuffered his Door to be unrepaired, and it was ſhewed in the Indictments that every one ought to repair, and thereupon 'twas moved that they might be quaſh'd; but the Court wou'd not quaſh them without Certificate that the Parties had repaired their Doors. *Trin.* 15. *C.* 1. *Marche's Rep.* 45. *Pl.* 71. See *Stile* 364. *p.* 159.

Court wou'd not quaſh Indictments, before the Way was repaired.

Of Common Right all the County ought to repair the Highway (except where ſome are particularly bound to repair it) becauſe the Country have their Eaſe and Paſſage by it. *Co. Rep.* 13. *p.* 33. *Paſ.* 7. *Ja.* 1.

An Indictment againſt the Inhabitants of *Shoreditch* and *Hackney* in *Middleſex*, for not repairing the Highways, was quaſh'd, becauſe the Pariſhes were jointly indicted, which ought to have been ſeveral. *Style's Rep.* 157.

Indictment quaſh'd where two Pariſhes jointly indicted, when they ſhou'd have been ſeveral.

An Indictment againſt the Inhabitants of *Mile-End*, whin the Pariſh of *Stebonheath*, alias *Stepney*, for not repairing the Highway, was quaſh'd, becauſe *Mile-End* is

Hamlet not chargeable to repair Highways.

but a Hamlet within a Pariſh, which cannot be charged to repair a Highway, except it be by Preſcription, or for ſome other ſpecial Reaſon, but the whole Pariſh or Vill is to be charged. *Style's Rep.* 163.

How an Indictment was quaſh'd.

An Indictment for not repairing a Highway was quaſh'd, becauſe it did not ſet forth from what Place to what Place the Way did lead. *Style's Rep. p.* 356. tho' it hath been held otherwiſe in *Halſet's* Caſe. *Mich.* 2. *Car.* 1. *Noy's Rep. p.* 90.

An Indictment againſt Sir *Richard Lucy* for not repairing a Highway, was quaſh'd, becauſe it was not ſhew'd of what Place he was an Inhabitant. *Noy's Rep. p.* 87. *Benlowe's Rep. p.* 198.

Where one is oblig'd to repair by reaſon of Tenure, and where by reaſon of Incloſing, &c.

Where one was preſented at Seſſions for not repairing a Highway, which he ought to repair in reſpect of his holding certain Lands, Parcel of the Way unrepair'd, and alſo which Lands he had incloſed and incroached, on Removal into B. R. the Court were of Opinion, that he ought to have been charged either by reaſon of his holding the Land ſingly, or by his incroaching ſingly, and *Kelynge C. J.* ſaid, that tho' by incroaching upon the Highway, he became liable to repair it ſo long as the Incroachment continued; but ſo ſoon as he lays the Land open again to the Way, he ſhall be diſcharged from the Repair of it: But where a Man is obliged to repair a Highway in reſpect of his holding any Lands, altho' he leaves thoſe Lands open to the Way, yet he is always obliged to repair the Way. *Trin.* 22 *Car.* 2. B. R. *Saunders p.* 260. Sir *Nicholas Stoughton's* Caſe.

Where one is obliged by incloſing an Highway.

The ſame Caſe is in 1 *Siderf. p.* 464. where *C. J.* ſaid, none denying it, that if one incloſe Land of one ſide the Highway, which was anciently incloſed of the other Side, he who made the new Incloſure ſhall repair all the Way: But if there had not been an ancient Incloſure of the other Side, he ſhou'd have repaired but half the Way: But if one make a new Incloſure of both ſides the Way, there he ſhall repair all the Way agreeable to Sir *Edward Duncomb's* Caſe. *Trin.* 10 *Car.* 1. *Cro. Car.* 366.

C. J. *Hale* ſaid in *Auſtin's* Caſe, *Hil.* 23 & 24 *Car.* 2. that if there be no ſpecial Matter to fix the Repair of the Highways upon others, the Pariſh where the Highway is, ought to repair it of common Right. *Vent. Rep. p.* 183 & *p.* 189.

See the Form of a Conviction for Highways upon the View of a Juſtice of Peace. *Kelyng's Rep.* 33, 34.

An Indictment againſt *S.* for not repairing the Highway, the Way laid to be the King's Highway, or the

common Street, quash'd, because it was not laid for all the King's Liege People. *B. R. Hill.* 9 *W.* 3. the King against *Sanders. Co. Lit.* 56. *Cro. Eliz.* 63.

3*dly*, For a Nusance in the Highway.

An Indictment for a Nusance in a Horseway was quash'd, because it ought to have been the Queen's Highway or the Highway. *Mich.* 29 *Eliz. B. R. Cro. Eliz.* 63. *Co. Lit.* 56. *a.* Where it ought to be said the Queen's Highway.

The Indictment must conclude *ad commune nocumentum ligeorum, &c.* if 'tis restrained by the Words *prope inhabitantium*, it will be quash'd. 1 *Roll. Rep.* 406. 1 *Vent.* 26.

Upon an Indictment for a Nusance, the Court never admits the Person to a small Fine till 'tis removed, and Affidavit made thereof, or else certified by two Justices. Neither ought the Defendant to take any Exceptions to the Indictment till he hath pleaded to it.

'Tis a Nusance to erect a Gate cross a Highway, tho' the Gate is easy to be opened, any Man may break it or cut it. *Cro. Car.* 185. *Cro. Car.* 133. *Jone's Rep.* 221. *Jones* and *Harward.* So 'tis to erect a Dam on his own Land, and Part of it on another Man's Land, and therefore the other Person may pull his Part down, tho' the Owner's Part fall. Gates must be anciently set up in Ways by Licence, to be justifiable. 2 Roll. Abr. 137.

In Indictments for Nusances, the Place in which the Nusance complain'd of was done, is to be express'd.

On an Indictment the Defendant must produce a Certificate, that the Nusance is removed, before he can take Exceptions to it, but a Presentment in such a Case must be quash'd without a Certificate, *&c.* When there must be a Certificate that Nusance is removed.

An Indictment for putting a Laystall next a Highway, not good, without shewing from and to what Place the Way leadeth. 2 *Roll. Abridg.* 81.

4*thly*, For not working on the Highways.

In *Easter-Term* 20 *Car.* 2. In an Indictment Notice was alledged, *Die Dominica post festum, &c.* and did not say *proxima*, which ought to be by the Statute 2 & 3 *Phil. & Mar. c.* 8. for which Reason it was quash'd. What Notice must be set forth.

If a Man hath eight Plow-Lands, tho' 'tis all Pasture, he ought to find eight Teams for six Days. *Raym.* 186.

The Indictment was, that the Defendant *habens tantam terram* did not work; and it was objected that the Defendant might have Lands and not use them himself; and this was held to be material, for in this Case the Statute charges the Occupier. Occupier of Lands only is chargeable.

An Information was for stopping a Way, and the Evidence ploughing it, and held good. 1 *Vent.* 4.

A Warrant to levy the Forfeiture of a Conſtable, or, &c. for refuſing or neglecting to return Liſts.

3 & 4 W. & M. c. 12. 2 Juſtices, 1 Witneſs upon Oath.

WHereas C. D. *the Conſtable or Tithing-Man of the Pariſh of*, &c. *in the County aforeſaid, hath refuſed or neglected to make and return a Liſt of the Names of a ſufficient Number of Inhabitants of the ſaid Pariſh of*, &c. *qualified by Law to ſerve the Office of Surveyor or Surveyors of the Highways in the ſaid Pariſh for the Year enſuing, notwithſtanding we ſent our Preſcept to him, requiring the ſame this Day at*, &c. *being a ſpecial Seſſions held for the electing of ſuch Surveyors, and for putting the Laws in Execution for repairing of Highways, whereby he hath forfeited the Sum of* 20 s. *Theſe are therefore in His Majeſty's Name to command you to levy the ſaid Sum of* 20 s. *by Diſtreſs and Sale of the Goods of the ſaid* C. D. *rendring to him the Overplus, if any ſuch ſhall happen to be, the neceſſary Charges of diſtraining being firſt deducted.* Given, &c.

A Warrant to levy the Forfeiture for refuſing to ſerve the Office of Surveyor, &c.

Moiety to Informer, the other to amend the Highways. 2 & 3 P. & M. c. 8. Two Juſtices.

WHereas C. D. *of*, &c. *was at a ſpecial Seſſions held on the* 3d *Day of this Inſtant* January, *lawfully nominated and appointed to ſerve the Office of Surveyor of the Highways in and for the Pariſh of*, &c. *for the Year enſuing; and it having been duly proved before us, That the ſaid* C. D. *had Notice of the ſaid Nomination within ſix Days after the ſame, and that he hath refuſed to take upon him the ſaid Office, whereby he hath forfeited the Sum of* 5 l. *One Moiety thereof to be paid to* E. D. *of*, &c. *who hath informed us of the ſaid Offence, and the other Moiety to be applied towards the repairing of the Highways. Theſe are therefore to command you to levy the ſaid Forfeiture of* 5 l. *on the Goods and Chattels of the ſaid* C. D. *by Diſtreſs and Sale thereof to be paid and employed as aforeſaid, and that you do forthwith return to us or ſome other Juſtice*, &c. *the Names of other Perſons within your Pariſh fit to ſerve the ſaid Office of Surveyor, that the Buſineſs of the Highways may not be neglected.* Given, &c.

A War-

A Warrant to impower the Surveyors to dig Gravel, &c. upon Waſtes or Commons out of the Pariſh.

Eſſex, ſſ. *Foraſmuch as (by the Information of the Surveyors of the Highways in the Pariſh of* A. *in the County aforeſaid) it appeareth unto us, that there is not ſufficient Gravel, Chalk, Sand, Cinders and Stones within the ſaid Pariſh, to repair the common and publick Highways: We do therefore, according to the Form of the Statute in that Caſe lately made and provided, hereby allow and approve that the ſaid Surveyors or either of them, and ſuch Perſon or Perſons as they or either of them ſhall appoint, ſhall and may dig, take and carry away Gravel, Chalk, Sand, Cinder or Stone out of any Waſte or Common of any Pariſh, Town, Village, or Hamlet neighbouring to the Pariſh aforeſaid, or upon the Sea-Coaſt, without paying any thing for the ſame (for the Repairing and Amending of the Highways aforeſaid) ſo as they fill up the Place within one Month next after their Digging aforeſaid (if required by the Owner of the Soil.)* Given, &c.

5 Eliz. c. 13. Two Juſtices.

A Warrant to levy the Forfeiture on a Surveyor, for not erecting a Poſt at Croſs-ways for Direction of Travellers.

Whereas the Poſt ſometime ſince erected and ſet up in the Highway leading to, &c. *at the Meeting of ſeveral Croſs-ways therein, is decayed and conſumed, ſo as to be render'd uſeleſs, and* E. D. &c. *Surveyor of the Highways in the ſaid Pariſh of,* &c. *being order'd by us to erect, fix, and ſet up a new Poſt at the Meeting of the Croſsways aforeſaid, with an Inſcription thereon in large Letters, ſetting forth the Name of the next Market-Town, to which each of the ſaid Croſsways leads, according to the Act of Parliament in that Caſe made, hath neglected to do the ſame, whereby he hath forfeited the Sum of* 10s. *to be employed towards the Erecting and Setting up ſuch Poſt. Theſe are therefore to require you to levy the ſaid Sum of,* &c.

8 & 9 W. 3. c. 16.

The Form of an Aſſeſſment for repairing the Highways.

AN Aſſeſſment made on the Inhabitants of the Pariſh of, &c. *in the County of*, &c. *for and towards the Repairing and Amending of the Highways in the ſaid Pariſh, the Year*, &c.

	l.	s.	d.
J. K. *Gent.*	0	7	6
G. H. *Yeoman*	0	5	0
E. F. *Merchant*	0	5	0
C. D. *&c.*	0	5	0
A. B. *&c.*	0	3	0

Memorandum *this Day*, &c. *the above Aſſeſſment was allowed and confirmed by us*, &c. *Two of His Majeſty's Juſtices of the Peace for the County of*, &c. *aforeſaid, and we do hereby empower*, &c. *Surveyor of the Highways in the ſaid Pariſh to ask, demand and levy the ſame of the ſeveral Perſons concerned as the Act of Parliament directs (or to levy the ſame by Diſtreſs, if not paid in ten Days.) Given under our Hands and Seals the Day and Year above-written.*

A. P.
D. T.

Two Juſtices may cauſe a Rate to be made for Reimburſing of a Perſon, where a Fine or Penalty is levied on him for the Pariſh's Neglect in repairing of the Highways.

If any Perſons find themſelves aggrieved by theſe Aſſeſſments, or any Act by the Juſtices of the Peace, the Juſtices at their General Quarter-Seſſions are to take Order therein, which ſhall conclude all Parties.

A Warrant to diſtrain on a Rate and Aſſeſſment made for repairing of Highways.

3 & 4 W. & M. c. 12.

WHereas a Complaint has been made unto us, That the ſeveral Perſons here undernamed have not paid unto you the Sums of Money aſſeſſed on them for the repairing and amending of the Highways in the ſaid Pariſh of, &c. *but that they refuſed to do the ſame when demanded, contrary to the*

the Laws in that Caſe made and provided: Theſe are therefore to require you to levy the ſeveral Sums here under mentioned, on the Goods and Chattels of the ſeveral and reſpective Perſons herein ſpecified, and that you do imploy the ſaid Monies in ſuch manner as by the Statutes is directed and appointed. Given, *&c.*

A Warrant to reimburſe a Surveyor by charging him who ought to repair, and who neglected after Notice, *&c.*

Eſſex, ſſ. *WHereas it hath been duly proved before* T. C. *Eſq; one of His Majeſty's Juſtices of the Peace for the County aforeſaid, That* S. T. *of,* &c. *ought to repair a certain Highway in,* &c. *as often as the ſame is in Decay: And whereas upon Oath made before me this preſent Day, by* T. P. *Surveyor of the Highways in and for the ſaid Pariſh, that he having found a Default in the ſaid Way, did the next* Sunday *afterwards, aſſoon as Sermon was ended, give publick Notice thereof in the Pariſh Church of,* &c. *and that the ſame was not amended within thirty Days after; whereupon the ſaid* T. P. *did, within thirty Days next following, amend the ſaid Default, and that the ſaid* S. T. *who ſhou'd have done the ſame, hath refuſed to pay the aforeſaid* T. P. *the Charges thereof. Theſe are therefore to will and require you forthwith upon Sight thereof to levy the Sum of* * *twenty Shillings by Diſtreſs and Sale of the Goods of the ſaid* S. T. *and that you pay the ſame to the ſaid* T. P. *which ſaid Sum I think reaſonable to be levied as aforeſaid, in order to reimburſe him the Charges laid out in amending the ſaid Way; and hereof fail not.* Given, *&c.*

One Juſtice.

* 'Tis as the Juſtice ſhall think reaſonable.

A Warrant againſt a Surveyor refuſing to Accompt.

Eſſex, ſſ. *WHereas it hath been duly proved before us* D. D. *and* R. B. *Eſquires, two of His Majeſty's Juſtices of the Peace for the County aforeſaid, that* J. O. *of,* &c. *Surveyor of the Highways in and for the ſaid Pariſh, hath neglected to give an Account upon Oath at any ſpecial Seſſions of all Money which hath come to his Hands, and which ought to be employed in amending the Highways, and how he hath diſpoſed thereof, ſo that for ſuch his neglect he hath forfeited the Sum of* 40s. *one Moiety to the Informer, and the other to repair the Highways in the ſaid Pariſh. Theſe are therefore,* &c.

Two Juſtices, one Witneſs upon Oath.

A Warrant againſt a Surveyor refuſing to deliver what remains in his Hands to the ſucceeding Surveyors.

Two Juſtices, one Witneſs.

WHereas S. C. *of*, &c. *this Day made Oath before us* R. K. *and* P. T. *Eſquires, two of His Majeſty's Juſtices of the Peace*, &c. *That* M. N. *now or late Surveyor of the Highways, in and for the Pariſh of* H. &c. *hath refuſed to deliver to the next Surveyors of the Highways in the ſaid Pariſh what Monies remained in the Hands of the ſaid* M. N. *which ought to be imployed in amending the ſaid Ways, which ſaid Money doth amount unto* 40 s. *by reaſon whereof he hath forfeited double the Value; one Moiety to the Informer, the other to amend the Higways in the ſaid Pariſh. Theſe are therefore*, &c.

A Warrant to levy the Forfeiture for not ſending a Team and Workmen to work on the Highways.

2 & 3 P. & M. c. 8.

WHereas C. D. *Surveyor of the Highways of and in the Pariſh of*, &c. *in the County aforeſaid, hath this Day made Oath before us, That* A. B. *who keeps a Horſe-Team, and hath a Plow-land in the ſaid Pariſh of*, &c. *did refuſe to ſend any Team to work in the repairing of the Highways on*, &c. *laſt paſt, one of the Days appointed for that Purpoſe, tho' he had due Notice given him by the ſaid* C. D. *contrary to an Act of Parliament in that Caſe made, whereby he hath forfeited the Sum of* 10 s. *Theſe are therefore in His Majeſty's Name to Command you to levy the ſaid Sum of* 10 s. *by Diſtreſs and Sale of the Goods of the ſaid* A. B. *and when the ſame ſhall be ſo levied, that you do imploy it for and towards the Amending the Highways in the ſaid Pariſh of*, &c. Given, &c.

A Warrant againſt Perſons neglecting to work on the Highways.

Eſſex, ſſ. WHereas *due Notice hath been given unto* A. B. G. P. J. O. *and* J. S. *all of the Pariſh of* H. *aforeſaid, Labourers to work on the Highways in the ſaid Pariſh on certain Days lately appointed for that Purpoſe in order to amend the ſame: And whereas it appeareth unto me by the Oath of*, &c. *that they and each of them have*

neglected or refuſed ſo to do: Theſe are therefore to require you forthwith to levy the reſpective Sums hereafter mentioned, upon the reſpective Goods and Chattels of the ſaid ſeveral Perſons, by Diſtreſs and Sale thereof, that is to ſay,

	l.	*s.*	*d.*
Upon the Goods of *A. B.* for neglecting two Days	0	3	0
Upon the Goods of *G. P.* for neglecting three Days	0	4	6

and that you imploy the ſaid Sums when levied, for and towards the Amending the Highways in the ſaid Pariſh of H. *And hereof fail not.* Given, &c.

A Warrant to levy the Penalty on a Perſon for pulling up Poſts on a Cauſway.

Berks, ſſ. *WHereas* A. B. *of the Pariſh of* S. *in the ſaid County of* Berks, *hath this Day given Information upon Oath before me, that on Monday laſt paſt, about eight of the Clock in the Evening of the ſaid Day,* C. D. *of the ſaid Pariſh, did cut down and carry away a certain Poſt out of the Cauſway, adjoyning to the Highway, leading from* P. *to* S. *in the ſaid County, there ſet up for the Preſervation of the ſaid Cauſway from Carts,* &c. *contrary to the Statute in that Behalf made: Theſe are therefore in His Majeſty's Name, to require and authorize you to levy the Sum of* 20 s. *on the Goods and Chattels of the ſaid* C. D. *which he hath forfeited for the Offence aforeſaid.* Given under my Hand and Seal, &c.

7, 8 W. 3. c. 29. one Juſtice, one Witneſs.

A Warrant againſt a Perſon laying Dirt, &c. in the Street.

WHereas Complaint has been this Day made unto me by S. P. &c. *That* R. K. *an Inhabitant of your Pariſh on,* &c. *laſt paſt, laid in the Street before his Houſe a large Quantity of Dirt,* &c. *to the great Annoyance of Paſſengers that paſs that Way, and contrary to the Statute in that Caſe made and provided: Theſe are therefore to Command you to bring the ſaid* R. K. *before me, or ſome other Juſtice,* &c. *to anſwer the Premiſſes,* &c. *or to levy by Diſtreſs and Sale of the Goods and Chattels of the ſaid* R. K. *the Sum of* 5 s. *which he has forfeited by the Offence aforeſaid,* &c. Given, &c.

An

An Information againſt a Perſon drawing a Waggon with more Horſes than allowed by Law.

THE *Information of* C. D. *of*, &c. *taken before* A. B. *Eſq; One of His Majeſty's Juſtices of the Peace for the County of*, &c. *this Day*, &c. *The ſaid* C. D. *ſaith on his Oath, that in and upon*, &c. *laſt paſt, he the ſaid* C. D. *ſaw a Waggon belonging to*, &c. *of*, &c. *in the ſaid County Carrier, travel through the Pariſh of*, &c. *in the plain Road ſome Diſtance from any Hill*, &c. *drawn by ſeven Horſes at length, which ſaid Waggon was loaden with Goods from*, &c. *and travelling for* London.

Jurat' coram me die & Anno ſupradict.

Drawing of travelling Carriages with more Horſes than are allow'd by Law, is a Nuſance by Statute, as it prejudices the Highways.

The Precept of the Juſtice to deliver the Horſe ſeized, and drawing with above Six Horſes, to the Seiſor.

Eſſex, ſſ. WHereas *on the Day of the Date hereof, it was duly proved before me upon the Oath of* C. D. *of the Pariſh of*, &c. *that a Waggon travelling in the Road for Hire on the*, &c. *of* July, &c. *laſt paſt in the Pariſh of*, &c. *aforeſaid, and not employed in Husbandry, but loaded with Goods not excepted to be loaded by any Law whatſoever, was drawn with more than Six Horſes, contrary to the Statute in that Caſe made and provided; by Reaſon whereof, one Horſe being above Six in the ſaid Waggon drawing it in Manner as aforeſaid, with all Geers, Bridles, Halters and Accoutrements, were then and there ſeiſed by the ſaid* C. D. *as forfeited, and were delivered by him to the Conſtable of*, &c. *aforeſaid, that being the next Pariſh where ſuch Seizure was made. Now I do hereby Command you the ſaid Conſtable of*, &c. *forthwith to deliver the ſaid Horſe, and other the forfeited Things unto the ſaid* C. D. *who firſt ſeized the ſame to and for his ſole Uſe and Benefit, paying unto the ſaid Conſtable* 2 s. *for keeping and ſecuring the ſame for two Days.* Given under my Hand, &c.

A

A Warrant to levy 10 *l.* upon the Goods of the Perſon who obſtructed the Seizure.

WHereas on the Day of the Date hereof, it was duly proved before me upon the Oath of C. D. *of*, &c. *that* L. M. *of* C. *in the County aforeſaid, did on the*, &c. *Day of*, &c. *in the Pariſh of*, &c *aforeſaid with Force endeavour to* * *hinder the ſaid* C. D. *in ſeizing or carrying away one Horſe, being above ſix Horſes, then and there drawing a Waggon travelling on the Road for Hire, contrary to the Statute in that Caſe made and provided, by Reaſon whereof the ſaid Horſe, with Geers, Bridles, Halters and Accoutrements, were forfeited to the ſaid* C. D. *who firſt endeavoured to ſeize the ſame, but was hindered by the ſaid* L. M. *as aforeſaid: Theſe are therefore to require you forthwith to levy the Sum of ten Pounds upon the Goods and Chattels of the ſaid* L. M. *by Diſtreſs and Sale thereof, in Caſe the ſaid Sum of ten Pounds be not paid to you within three Days next after ſuch Diſtreſs is taken, and that you render the Overplus to the Owner, the Charge of diſtraining and ſelling the ſaid Goods being firſt deducted.* Given, &c.

* Or reſcue it in uſing Violence to the Seizor. as the Caſe is.

Beſides the Payment of this ten Pound, he muſt likewiſe be committed for three Months.

The Form of the *Mittimus*.

Recite the Warrant aforementioned till you come to:

Theſe are therefore to require you to apprehend the ſaid C. D. *and to convey him to the Common Gaol at* C. *for the ſaid County, and to deliver him to the Keeper thereof, who is hereby required to receive the Body of the ſaid* C. D. *and to keep him in the ſaid Gaol without Bail, for the Space of three Months next enſuing.* Given, &c.

Indictment for ſtopping and obſtructing an Highway.

Eſſex, ſſ. JURR' &c. quod cum a tempore cujus contrarii memoria hominum non exiſtit uſitat' fuit quod ligei Dom' Regis habuerunt & legitime uſi fuerunt quadam via Regia communi apud H. in Com' Eſſex prædict' in quodam loco ibid' vocat' &c. ducen' a villa de H. prædict' uſque ad Burgum L. in Com' prædict' pro ſeipſis & catallis ſuis abſque

1 Lutw. 490.

absque ulla obstructione aut retardatione per aliquas Follas sepes aut aliqua obstacula quecunque quidam tamen W. A. de H. prēd in Com' prēd 23 die Martii Anno Regni, &c. quandam Follat' & sepem vivam (anglice a Ditch and Quickset Hedge) apud H. prædict' in prædict' loco super viam Regiam communem prædict' ad magnam obstructionem & retardationem ligeorum dict' Dom' Regis per viam illam transeun' * effodit & erexit & follat' & sepem prēd sic ut præfertur effollam & erect' adhuc custod contra pacem dict' Dom' Regis Coronam & Dignitatem suas.

* 'Tis not necessary to say vi & armis, because he may be the Owner of the Land, Poph. 200. But it must conclude contra pacem, Godb. 59.

Indictment for not repairing a Highway.

Essex, ss. JURR' &c. quod Communis alta via Regia in Parochia de H. in Com' prædict' continen' in longitudine duas virgat' & in latitudine unam Virgatam vicesimo tertio die Martii Anno Regni, &c. fuit & adhuc est in magno decasu pro defectu Reparationis & Emendationis ejusdem ita quod ligei dicti Domini Regis per & trans viam illam transeuntes absque magno periculo non possunt transire ad grave dampnum & commune nocumentum omnium ligeorum subditorum dicti Domini Regis per viam illam transeuntium † & quod R. B. de H. prēd Gen' viam prēd reparare debet quoties & quando necesse fuit ratione tenure terrarum & tenementorum suorum ibidem prope adjacen', &c.

† Et quod inhabitantes villæ de H. ex Jure & ex Antiqua consuetudine viam predict' reparare debeant & soliti sunt.

Indictment for a Nusance in the Highway.

Essex, ss. JURR' &c. quod R. C. de H. in Com' prēd dict' Butcher 7 die Januarii Anno Regni, &c. & diversis aliis diebus & vicibus tam antea quam postea apud H. prēd in Com' prēd in quodam loco ibidem prope publicum vicum vocat', &c. nec non prope separales domos Mansionales diversorum ligeorum Domini Regis subditorum ibidem inhabitantium magnam quantitatem fimi intestinorum & al' sordium posuit & locavit ratione cujus & per insalubres odores & ferores abinde proceden' aer ibidem per totum tempus prēd corrupt' & infect' existit ad Commune nocumentum omnium ligeorum subditorum dict' Domini Regis in & per vicum & viam prēd' transeunt' in malum exemplum omnium aliorum in hujusmodi casu delinquen' ac contra Pacem, &c.

Turnpikes

Turnpikes are now grown very frequent, eſpecially in *Middleſex*; and in moſt of the Acts for eſtabliſhing them there is a Clauſe, that if any Perſon ſhall drive any Horſe, Sheep, or other Cattle, thro' any Grounds adjoining to the Ways whereby the Toll ſhall be avoided, being convicted thereof, on Oath before one or more Juſtices of the Peace for the County, he ſhall forfeit 10 *s.* leviable by Diſtreſs.

The Puniſhment of thoſe who deſtroy Turnpikes, &c.

By an Act made 1 *G.* 2. If any Perſon either by Day or Night, wilfully and maliciouſly break down, or otherwiſe deſtroy any Turnpike, Gate, or any Poſts or Rails, Walls, or other Fences erected to prevent Paſſengers from paſſing by without paying Toll, he ſhall, being lawfully convicted thereof, on Oath of one or more Witneſſes, before any two Juſtices of the Place, or before the Juſtices in open Seſſions, be ſent to the common Gaol, or Houſe of Correction, to be kept to hard Labour for three Months without Bail; and the Juſtices ſhall order, that the Offender ſhall be, by the Maſter of the Gaol or Houſe of Correction, on the firſt Market-Day, once publickly whipt in ſuch City, Town, *&c.* near which the Offence ſhall be committed, between the Hours of Eleven and Two.

Of thoſe who do it a ſecond Time, &c.

If any Perſon commit the ſaid Offences a ſecond Time, or wilfully and maliciouſly break down any Lock, Sluice or Floodgate, erected by Authority of Parliament, for preſerving the Navigation of any River, and ſhall lawfully be convicted of the ſame, upon Indictment before his Majeſty's Juſtices of Aſſize, for the County where the Offence ſhall be committed, he ſhall be adjudged a Felon, and ſhall be tranſported for Seven Years.

Action muſt be laid in proper County, &c.

If any Action be brought againſt any Perſon for any Thing done in Purſuance of this Act, the Action ſhall be commenced within ſix Months af-

ter the Fact committed, and ſhall be laid in ſuch County where the Cauſe of the Action ſhall ariſe; and the Defendant may plead the general Iſſue, and give this Act and the ſpecial Matter in Evidence, and on a Verdict, *&c.* ſhall recover treble Coſts.

This Act ſhall be publickly read at every Quarter-Seſſions, and at every Leet or Law-Day during the Continuance thereof; and ſhall be in Force for the Term of five Years, and from thence to the End of the then next Seſſion of Parliament, and no longer.

But now by a Stat. made 5 *G.* 2. 'tis enacted, that if any Perſon or Perſons whatſoever, ſhall, either by Day or Night, wilfully and maliciouſly break down, cut down, pluck up, throw down, level, or otherwiſe deſtroy any Turnpike, Gate, or any Poſt, Rail, Wall, or other Fence belonging to any ſuch Turnpike Gate, erected, or to be erected, to prevent Paſſengers from paſſing by without paying the Toll directed to be paid, by any Act of Parliament already made, or hereafter to be made for that Purpoſe, and ſhall be lawfully convicted of the ſame upon Indictment, before any of his Majeſty's Juſtices of Aſſize, *Oyer* and *Terminer*, and general Gaol-Delivery for the County, City, Town, Borough, or Corporation where ſuch Offence ſhall be committed, every Perſon ſo offending, and thereof lawfully convicted, ſhall be adjudged guilty of Felony; and the Courts before whom ſuch Felon ſhall be tried, ſhall have Power and Authority to tranſport ſuch Felons for ſeven Years, as other Felons are directed to be tranſported.

And if the ſ return before the Expiration of the ſaid ſeven Years, contrary to the Meaning of this Act, or of the Act paſſed in the firſt Year of King *George* II. they ſo returning, ſhall ſuffer Death, as Felons, without Benefit of Clergy.

And

And if the Commiſſioners and Truſtees, appointed to put any Act of Parliament for the Repair of any Highway in Execution, ſhall cauſe to be erected or continued, any Gate or Turnpike, where they have not any Power by any Act of Parliament to erect ſuch Gate or Turnpike, it ſhall be lawful for the Juſtices of the Peace of the County, where any ſuch Gate or Turnpike are, or ſhall be erected, or continued in their General Quarter-Seſſions aſſembled, upon Complaint of any ſuch Abuſe or Exceſs of Power in ſuch Commiſſioners or Truſtees, in a ſummary Way to hear and determine the ſame; and thereupon to order the Sheriff of the County, (who is thereby authorized and required to execute ſuch Order) to remove any ſuch Gate or Gates, Turnpike or Turnpikes.

This Act, and alſo the ſaid Act of 1 *Geo.* 2. *cap.* 19. ſhall continue, and be in full Force for five Years, from the 24th of *June*, 1732. and from thence to the End of the then next Seſſion of Parliament, and no longer.

A Warrant to ſend a Perſon to the Houſe of Correction for breaking down the Gate of a Turnpike.

Berks, ſſ. *WHereas it hath been duly proved before us* J. S. *and* J. B. *Eſqrs, two of His Majeſty's Juſtices of the Peace for the County aforeſaid, by the Oaths of* E. F. *and* G. H. *that* J. K. *of* B. *aforeſaid, did on* Wedneſday *laſt wilfully, maliciouſly, and violently cut, break down, and lay open the large bolted Gate belonging to the Turnpike within the Pariſh and Highway of* B. *aforeſaid, ſo that Paſſengers might paſs by the ſaid Turnpike without paying any Toll, in great Contempt* 1 G. 2. c. 23.

One Witneſs, Two Juſtices, or Seſſions.

tempt of the Act of Parliament made for repairing the ſaid Ways, and erecting the ſaid Turnpike: Theſe are therefore in His Majeſty's Name, to require and authorize you to convey the ſaid J. K. *to the ſaid Houſe of Correction, and to deliver him to the Keeper thereof: And you the ſaid Keeper are hereby required to take the ſaid* J. K. *into your Cuſtody, and him ſafely to keep at hard Labour for the Space of three Months: And you the ſaid Keeper are hereby further required on* Wedneſday *next, to deliver the ſaid* J. K. *to the Conſtable of the Town of* B. *aforeſaid, who is commanded to ſtrip the ſaid* J. K. *from the Waſte upwards, and to whip, or cauſe to be whipped publickly in the Market-place of the ſaid Town, between the Hours of Eleven and One of the Clock of the aforeſaid Day.* Given *under our Hands and Seals,* &c.

A Warrant againſt a Perſon for letting Horſes thro' Grounds to avoid the Toll.

8 G. 1. c. 30.

Whereas C. D. *of,* &c. *was this Day legally convicted by the Oaths of,* &c *of driving ſeveral Horſes thro' certain Grounds adjoining to the Highway leading to* Hampſtead, *to avoid the Payment of the Toll that is due by Statute from all Perſons paſſing the ſaid Highway contrary to the Statute aforeſaid.* Theſe *are therefore in His Majeſty's Name to require you to levy the Sum of* 10s. *on the ſaid* C. D. *by Diſtreſs and Sale of his Goods for the Offence aforeſaid.* Given, &c.

An

An Appointment of a Receiver of Toll at a Turnpike.

At the General Quarter-Sessions of the Peace held at, &c. on, &c.

WE whose Names are hereunto subscrib'd, and Seals affixed, being Justices of the Peace for the County of, &c. *aforesaid, do (by Virtue of an Act of Parliament made and passed,* &c.) *hereby appoint* C. D. *of,* &c. *Receiver and Collector of the Toll, (for the Year ensuing) ordered by the said Statute to be paid for all Horses, Coaches, Waggons, Carts, Cattle, Sheep,* &c. *at the Turnpike erected on the Highway, leading,* &c. *for the Reparation of the said Way, being* 1 *d. for every Horse,* 1 *s. for every Coach,* &c. *and if any Person shall refuse to pay the said Toll, the said* C. D. *is hereby appointed to distrain and detain any Horse, Coach,* &c. *until the same, and the Charge of Distress shall be fully satisfied and paid, and the said Toll so from Time to Time received the said* C. D. *is to pay to,* &c. *Surveyor of the said Roads, and to account for the same to us, or some other Justices of the Peace of this County, when thereunto required.* Given, &c.

An Adjudication of Justices when Roads are repaired by a Turnpike.

At the General Quarter-Sessions of the Peace held at, &c. on, &c.

WHereas the Justices of the Peace for the County of Middlesex, *have Power and Authority by Act of Parliament made and pass'd,* &c. *to adjudge and determine when the Highways leading to,* &c. *are sufficiently repaired and amended, whereupon the Tolls therefore appointed on Payment of the Money borrow'd on the Credit of the Act, with the Interest, and the Charges of Passing the same are to cease. We the underwritten Justices do, by Virtue of the said Power; and on due Certificate thereof, hereby adjudge that the said Highways leading to,* &c. *are sufficiently amended and repaired as they ought to be; and that the said Toll ought immediately to cease and determine upon paying of the Money borrowed on the said Act, with the Interest.* Given, &c. 8 Geo. 1. c. 30.

One Witneſs, Two Juſtices, or Seſſions.

tempt of the Act of Parliament made for repairing the ſaid Ways, and erecting the ſaid Turnpike: Theſe are therefore in His Majeſty's Name, to require and authorize you to convey the ſaid J. K. *to the ſaid Houſe of Correction, and to deliver him to the Keeper thereof: And you the ſaid Keeper are hereby required to take the ſaid* J. K. *into your Cuſtody, and him ſafely to keep at hard Labour for the Space of three Months: And you the ſaid Keeper are hereby further required on* Wedneſday *next, to deliver the ſaid* J. K. *to the Conſtable of the Town of* B. *aforeſaid, who is commanded to ſtrip the ſaid* J. K. *from the Waſte upwards, and to whip, or cauſe to be whipped publickly in the Market-place of the ſaid Town, between the Hours of Eleven and One of the Clock of the aforeſaid Day.* Given *under our Hands and Seals,* &c.

A Warrant againſt a Perſon for letting Horſes thro' Grounds to avoid the Toll.

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An

An Appointment of a Receiver of Toll at a Turnpike.

At the General Quarter-Seſſions of the Peace held at, &c. on, &c.

WE whoſe Names are hereunto ſubſcrib'd, and Seals affixed, being Juſtices of the Peace for the County of, &c. *aforeſaid, do (by Virtue of an Act of Parliament made and paſſed,* &c.) *hereby appoint* C. D. *of,* &c. *Receiver and Collector of the Toll, (for the Year enſuing) ordered by the ſaid Statute to be paid for all Horſes, Coaches, Waggons, Carts, Cattle, Sheep,* &c. *at the Turnpike erected on the Highway, leading,* &c. *for the Reparation of the ſaid Way, being* 1 *d. for every Horſe,* 1 s. *for every Coach,* &c. *and if any Perſon ſhall refuſe to pay the ſaid Toll, the ſaid* C. D. *is hereby appointed to diſtrain and detain any Horſe, Coach,* &c. *until the ſame, and the Charge of Diſtreſs ſhall be fully ſatisfied and paid, and the ſaid Toll ſo from Time to Time received the ſaid* C. D. *is to pay to,* &c. *Surveyor of the ſaid Roads, and to account for the ſame to us, or ſome other Juſtices of the Peace of this County, when thereunto required.* Given, &c.

An Adjudication of Juſtices when Roads are repaired by a Turnpike.

At the General Quarter-Seſſions of the Peace held at, &c. on, &c.

WHereas the Juſtices of the Peace for the County of Middleſex, *have Power and Authority by Act of Parliament made and paſs'd,* &c. *to adjudge and determine when the Highways leading to,* &c. *are ſufficiently repaired and amended, whereupon the Tolls therefore appointed on Payment of the Money borrow'd on the Credit of the Act, with the Intereſt, and the Charges of Paſſing the ſame are to ceaſe. We the underwritten Juſtices do, by Virtue of the ſaid Power; and on due Certificate thereof, hereby adjudge that the ſaid Highways leading to,* &c. *are ſufficiently amended and repaired as they ought to be; and that the ſaid Toll ought immediately to ceaſe and determine upon paying of the Money borrowed on the ſaid Act, with the Intereſt.* Given, &c. 8 Geo. 1. c. 30.

Homicide.

HOmicide *quaſi* (*Hominis cædes*) in the general Senſe of the Word ſignifies every ſort of killing a Man, and may be divided into,

1. Caſual Death.
2. Chance-Medley, or *per infortunium*.
3. In Execution of Juſtice.
4. *Ex neceſſitate* in Defence of a Man's Perſon, Houſe or Goods, &c.
5. Manſlaughter.
6. Murder.
7. *Felo de ſe*, or Self-Murder.

Of all which in their Order.

Firſt, Caſual Death.

Caſual Death, &c.

CAſual Death is when a Man is ſlain otherwiſe than by the Hands of another, as by the Fall of a Houſe or Tree upon him, or from a Houſe or Cart, &c. or by a Bull, Dog, or other Beaſt, &c. but tho' a Man be ſlain in ſuch Manner, yet if it be by the Means or Procurement, or wilful Default of another Man, this is Felony in the Party procuring or cauſing it.

'Tis the proper Office of a Coroner to enquire of ſuch Death, which he is to do by Jury, &c.

Deodand.

Any thing which is the Cauſe of ſuch Death is a *Deodand*, and is forfeited to the King, but not 'till found by Matter of Record; and this Forfeiture ſhall have Relation from the Time of the Stroke given, ſo that if the Owner ſell the Goods after that Time, and before the Inquiſition taken, the Property is not bound by ſuch Sale, but the King ſhall be intitled to it.

After the Thing, which is the Cauſe of ſuch caſual Death, ſhall be forfeited to the King, praiſed and taken for a *Deodand*, &c. the Price of the Thing ſhall be diſtributed in Alms to the Poor by the King's Almoner; but the Almoner hath no Intereſt in ſuch Goods, but hath only the Diſpoſition of the King's Alms, *durante beneplacito*, ſo that the King may grant them to any other. For the Office and Duty of the Almoner, ſee *Co.* 9, 4.

And

And ſince *Deodands* are not forfeited until the Matter be found of Record, therefore they cannot be claimed by Preſcription. *Co.* 5, 110. Deodands can't be claim'd by Preſcription.

The Jury which find the Death of the Man, muſt alſo find and appraiſe the *Deodand*, and the Sheriff ſhall be charged with ſuch Price, and ſhall levy the ſame of the Town where it falleth, altho' it were not committed to the Town to keep. See the *Stat. de Officio Coronat.* 4 *Ed.* 1. Who are to find and appraiſe the Deodand.

All Goods which do cauſe, or are Occaſion of the Death of a Man, by Miſadventure, are *Deodands*. *Co.* 5, 110. What is a Deodand.

If a Man killeth another with my Sword (or other Weapon of mine) my Weapon ſhall be forfeited as a *Deodand*. Caſes of Deodands.

A Man kill'd by a Bell, the Bell is no *Deodand*. 1 *Leon.* 136.

A Cart met a Waggon loaded, and endeavouring to avoid it drove up a Bank and overturned, and threw the Man out of the Cart before the Wheels of the Waggon, which run over him and killed him; and it was held that both the Waggon, Loading, and all the Horſes, and alſo the Cart were all *Deodands*.

A Horſe threw a Man in a River, and the Stream carried him to the Wheel of a Mill, which killed him; both the Horſe and Wheel were forfeited; but if he had been thrown from his Horſe by the Violence of the Stream, the Horſe had not been forfeited.

Two Men riding over the *Trent* were drowned by the Violence of the Stream, their Horſes were not *Deodands*, becauſe the Men were drowned by the Violence of the Stream, and not carried out of their Depth by their Horſes. 2 *Roll. Rep.* 33. 2 *Cro.* 483. *Poph.* 136. *See* the Lord *Almoner*'s Office in diſtributing them. 9 *Co.* 4.

Secondly, Chance-Medley; Or, per Infortunium.

CHance-*Medley* is where a Man is killed by another caſually, when he is doing any Thing which is lawful, and without any Intent to hurt; as ſhooting at a Bird which is a lawful Act, and killing a Man; the Father or Maſter correcting a Son or Servant, and Death enſuing, Chance-Medley, or per Infortunium.

And by Stat. of *Marlbridge* 52 H. 3. *c.* 25. the Killing a Man by Misfortune or Misadventure only, shall not be adjudg'd Murder. So that by our Law now this is no Felony, neither shall he have Judgment of Death; but he shall have his Pardon of Course for his Life and his Lands, yet he shall forfeit his Goods in regard a Subject is killed by his Means.

The Forfeiture.

Cases of Chance-Medley.

If a Carpenter, Mason, *&c.* are building a House some Distance from the Highway, and do throw or let fall a Stone, Tile, or Piece of Timber from the House, and other Thing from a Cart, *&c.* (and giveth Warning thereof) and another is killed thereby against his Will, this is *Chance-Medley*, or *per Infortunium*; for he was doing nothing but what was lawful and usual to be done, and he could have no ill Intention because he gave Notice what he was about to do. But if this had been in *London* Streets, or other Place of great Resort, it had been Manslaughter, because of the continual Passing of the People; for in such Case it shall be presumed that his Intention was to do Mischief.

The Special Matter must be found.

In this Case the Special Matter must be found, that the Court may judge whether the Killing was *per infortunium*, and therefore 'tis not sufficient to find it generally.

The Method of taking out the Pardon.

The Method of taking out the Pardon was anciently by *Certiorari* out of *Chancery* to remove the Record; which being certified, the Lord *Chancellor* issued forth a Pardon; but now 'tis done by Certificate of the Judge or Justices, *&c.* whereupon is issued the following Writ.

The Form of the Writ.

QUia accepimus per recordum dilectorum & fidelium nostrorum A. B. Mil' & C. D. Mil' Justiciar' nostrorum ad Gaolam in Com' Essex deliberand' assign' quod D. M. captus & detentus in Gaola præd' pro morte J. S. unde indictatus est interfecit ipsum J. S. per infortunium per quod idem D. M. gaole nostre præd' remissus est ad gratiam nostram ibidem expectand' nos pietate moti perdonavimus eidem D. M. sectam pacis nostre que ad nos pertinet pro morte præd' S. J. & firmam pacem nostram ei inde concedimus ita tamen quod stet rectus in Curia nostra si quis versus eum loqui voluerit de morte suprædicta in cujus, *&c.*

Thirdly,

Thirdly, Homicide in Execution of Justice.

Homicide in Execution of Justice.

IT must be by a proper and lawful Officer, as the Sheriff, not by a Stranger, for then 'tis Felony.

The Judgment must be given by one who had a proper Jurisdiction to try the Cause. For if a Justice of Peace give Judgment in Treason, the Execution is Murder, both in him and in the Officer; if in Trespass he give Judgment of Death, 'tis Felony in him, but not in the Officer.

The Execution must be pursuant to the Judgment regularly, tho' in some Cases it has been otherwise, as *vide postea* in Title Judgment.

So if a Felon assault a Gaoler, or Escape, and the Gaoler pursues him, and he refuses to surrender, and the Gaoler kills him; but otherwise it is in Case the Imprisonment were for Debt. 2 *Roll's Rep.*

So if a Felon by Resistance or Flight cannot be taken without killing, he who kills him must be acquitted without Forfeiture of Goods, because every Man is warranted by Law to apprehend him; but there must be a Felony actually done, which Circumstance is not required where a Man hath a Warrant to take a Felon. 3 *Inst.* 221.

An Officer in Execution of a lawful Warrant, or any legal Process against a Man who resists him, upon Not-guilty pleaded, the Special Matter must be given in Evidence; and it being found for him, he is to be acquitted without Forfeiture or Pardon. Otherwise if the Warrant be ill, as *I. S.* Knight, being a Baronet, but never knighted, so the Arrest tortious. *Cro.* 372.

But in all these Cases the Necessity must be unavoidable, and there must not be the least Colour of Malice.

Fourthly, Homicide *ex Necessitate*, in Defence of One's self, or House, or Goods, *&c.*

Homicide se defendendo, &c.

IS where one killeth another in the necessary Defence of him or his, and which cannot otherwise Escape.

Cases of it.

As if I kill a Man who would kill me without Provocation, or an Offender attempting feloniously to murder or rob me, or to commit Burglary; this is justifiable in me, or any of my Servants, or Company, or any Person in the House so attempted to be broke in upon in the Night. And this being found by Verdict upon Trial, we shall be all discharged without Loss of Life, Land or Goods, or Pardon. 24 *H.* 8. *cap.* 5. And this was justifiable even by the Common Law, though with this Difference, that he who killed a Thief, which would have robbed him upon the Highway, should forfeit Goods; but he who killed one who would have robbed or murdered him in his House forfeited nothing. *Co.* 11, 82.

So if I kill a Man who sets my House on Fire.

So if a Woman killeth a Man endeavouring to ravish her.

So if against a Thief or Murderer one defend himself, and kill the other, the true Man shall never give Way to the Thief, *&c.* nor forfeit. 3 *Inst.* 56.

This *Homicide* not being done *felleo animo*, but upon inevitable Necessity, admits of no Accessaries, and is no Felony, tho' voluntary.

So where the Assaulted fights, and before any mortal Blow gives back to Hedge, *&c.* and then kills the other, no Felony.

So if the other come upon his Sword.

If the Assaulted falls to the Ground, the giving back is excused no Felony.

So a Gaoler assaulted by his Prisoner, need not give back.

Homicide in these Cases is excusable; but it must be done only upon an inevitable Necessity, and he must give back as far as he can without endangering his own Life, and the Party retires to the Wall; for if before, 'tis Manslaughter.

If one cometh by Day or by Night to enter into my House pretending Title thereto, and to put me out of Possession, and I kill him, this is Manslaughter in me.

So if a Thief assault me, either to rob or kill me, I am not bound to flie to a Wall, no more is any Officer of Justice in the executing of his Office. *Stamf.* 14.

A Servant may justify the killing another in Defence of his Master's Person or House, if it cannot be otherwise avoided; so may he kill one that robbed and killed his Master, so that it be done presently. 21 *H.* 7. 39.

One

One may justify the Beating of another in the Defence of the Possession of his Goods, but not to kill him unless he be a Thief, that would have taken them from him.

If a Park-keeper, &c. kill an Offender in his Park, &c. after Hue and Cry levied and not yielded to, it is no Felony. *Cromp.* 30.

What will excuse or not in *Homicide*, and what Acts will justify or not, see *Style* 467. *Buckner*'s Case.

Fifthly, Manslaughter.

HItherto of *Homicide* which is not Felony; we proceed to that which is, and which may be divided into Manslaughter, which has Clergy allow'd for the first Time, and Murder, which has none, and Self-Murder cannot. What is Manslaughter.

Manslaughter is the Killing a Man upon a sudden Provocation, without Malice and in the Heat of Blood, or in doing an unlawful Action without Malice.

In Manslaughter.

1. There must be no deliberate Act, but the falling out must be sudden.

2. The Act must be unlawful, for if lawful, then 'tis Chance-Medley, and it must be without an Intention of any Personal Wrong; for if the Intent is malicious, 'tis Murder.

Two Men fight, and one of them breaks his Sword, and a Stranger lends him another with which he kills his Adversary, 'tis Manslaughter in both. Cases of it.

Two fight and part presently; after meet and one is killed, this is one continued Affray, and therefore Manslaughter; but if the Heat had been over, and they had met again in cool Blood, it had been Murder.

There was Malice between two, the Deceased challenges the other, who refuses to meet, but said he should go to such a Place; the Deceased meets him, and was kill'd, this is Manslaughter. *H. P. C.* 48.

Spectators may be indicted and fined, if seeing two Fight they do not prevent Death. *Noy* 50.

Entring a House with Force, those who are turn'd out of Possession come to set it on Fire, and one within shoots and kills another without Doors, 'tis Manslaughter, because the Entry was unlawful. *H. P. C.* 56.

A Servant draws his Sword in Defence of his Maſter, who if he had kill'd the other would have been guilty of Manſlaughter; but in that Affray the Maſter is killed, 'tis Manſlaughter in the Servant. *Sid.* 254.

A ſudden Provocation and Death enſuing, doth ſo far extenuate the Crime, as to make it Manſlaughter.

As an Husband killing another committing Adultery with his Wife. *Raym.* 112. 2 *Cro.* 296.

'Tis the ſame in all Caſes of doing unlawful Acts without a malicious Intention to kill, *viz.* Prize-fighting by Conſent, playing at Foils, throwing Stones in Places where People paſs; ſhooting at Deer in another Man's Park, forcible Entry and Ejecting another, and ſuch like are unlawful; and if any are thereby killed, 'tis Manſlaughter.

So where Bailiffs coming to ſerve an Execution, and the Debtor ſhuts the Door, which they break open, and one is killed, 'tis Manſlaughter, becauſe the Breaking the Door was unlawful.

The Offender in Manſlaughter (not being within the Stat. of 1 *Jac.* 1. *c.* 8.) has the Benefit of Clergy the firſt Time, and forfeits his Goods and Chattels.

Caſes of it. Where a Man is found guilty of this Offence, he is ſeldom bail'd 'till Clergy had, tho' Mr. *Liſle* was bail'd in *Mich.* 8 *W.* 3. yet it was denied Mr. *Keat*, and therefore ſeems diſcretionary in *B. R.*

If one Man ſhall pull another by the Noſe, or fillip him upon the Forehead, and he who is ſo aſſaulted draws his Sword and immediately runs the other thro', this is but Manſlaughter, becauſe the Peace was firſt broken by the Perſon kill'd. *Style's Rep.* 467. *Buckner's* Caſe.

If a Man perceiving that another is by Force reſtrain'd of his Liberty, or injuriouſly treated, ſhall out of Compaſſion reſcue him, and in the doing thereof ſhall kill any of thoſe who reſtrain him, this is only Manſlaughter, though the Perſon abuſed do not complain, or call for Aſſiſtance. *Kel. Rep.* 137. *Hopkin Hugget's* Caſe.

Reſcue of one falſly impriſon'd, and killing, enſuing on it, by the Twelve Judges not Murder. *Black.* 216.

If Bailiffs come to a Houſe to arreſt a Perſon, and the Houſe being lock'd, they attempt to break in, whereupon the Son of him who was to be arreſted ſhoots and kills one of them, this is only Manſlaughter. *Jones* 429.

If

If a Gaoler kill a Priſoner in taking him when eſcaped, as in Execution for Debt, Manſlaughter. 1 *Roll. Rep.* 189.

Several Perſons are playing at Bowls, two of them fall out, and a Third who had no Hand in the Quarrel in Revenge of his Friend, gave the other a Stroke with his Bowl, of which he died, this is Manſlaughter only, happening on a ſudden. *Co. Rep.* 12. *p.* 87.

Sir *J. C.* and his Man were playing at Foils, and the Chape of Sir *J.*'s Scabbard fell off unknown to him, ſo that upon a Thruſt the Rapier went into his Man's Belly and killed him; this was Manſlaughter. Sir *John Chicheſter*'s Caſe. *Paſch.* 22 *Car.* 1. *Aleyn*'s *Rep. p.* 12. *p.* 337.

A. B. and *C.* were indicted upon the Stat. 1 *Jac.* 1. *cap.* 8. for ſtabbing *D.* and the Indictment was that *A.* ſtabb'd him, and *B.* and *C.* were preſent abetting, *&c. & contra formam Statuti*, and *A.* was hanged, and *B.* and *C.* reſpited, and afterwards admitted to their Clergy; for tho' the Jury ought to find them guilty upon an Indictment of Murder at Common Law; yet in Conſtruction of this Statute which is ſo penal, it ſhall be extended only to ſuch as really and actually made the Thruſt, and not to thoſe who by Conſtruction of Law only may be ſaid to make it, the Statute being only to reſtrain the Rage of thoſe as would ſuddenly ſtab another. *Hill.* 23 *Car.* 1. *Aleyn*'s *Rep. p.* 43. *Page* and *Harwood*'s Caſe. Caſes of it.

Tho' if a Man kill another whom he catches on a ſudden committing Adultery with his Wife, it be but Manſlaughter; yet where the Husband being informed of the Adulterer's Familiarity with his Wife, ſaid he would be revenged of him, and afterwards finding him in the Act killed him; this was held Murder by Judge *Jones*. *Mich.* 23 *Car.* 2. 1 *Vent.* 158. *Maddy*'s Caſe.

J. R. found a Piſtol in the Street, and ſhew'd it to one, and they two took the Gun-ſtick and put down into the Piſtol ſo low they thought it was not charged; and the Wife of *J. R.* ſtanding before him, he pull'd up the Cock and the Piſtol went off and kill'd the Wife, upon which he cry'd out, *Oh! I have kill'd my dear Wife!* and call'd in his Neighbours. It was holden that this was Manſlaughter, and not only Chance-Medley or Miſadventure. 16 *Car.* 2. *Keelyng*'s *Rep. p.* 41. *James Rampton*'s Caſe.

Sixthly, Murder.

What is Murder.

MUrder is the killing any Perſon upon Malice forethought, either expreſs or implied, the Death enſuing within a Year and a Day. *H. P. C. Fol.* 53.

Caſes of it.

Where a Servant and a Stranger conſpired to rob the Miſtreſs, and in the Night the Servant let the other into the Houſe, and lighted him to his Miſtreſs's Bed, where he kill'd her, the Servant neither doing or ſaying any thing, but only holding the Candle; this was Murder in the Stranger, and petty Treaſon in the Servant. *Moor* 91. *Dyer* 128.

The Wife and her Servant conſpired to kill the Husband, and appointed Time and Place, and the Servant alone in the Abſence of the Wife kill'd him; this is petty Treaſon in both; but if he had been kill'd by a Stranger, the Wife ſhou'd be hanged, and not burnt, becauſe ſhe cannot be guilty of petit Treaſon, where the principal is only guilty of Murder.

Murder is puniſhed by hanging the Offender.

In the Time of our *Saxon* Anceſtors, there were pecuniary Compenſations for killing a Man; but even then premeditated and clandeſtine Murders were never excuſed by thoſe Payments, for they were always puniſh'd with Death.

There are ſeveral Ways of murdering a Perſon, beſides thoſe of downright open Violence, as by laying a ſick Man in the cold, hiding an Infant under Leaves or Moſs, *&c.* which is afterwards deſtroyed by Vermin, ſtirring up a Dog, or any other Beaſt accuſtomed to bite or do Miſchief, knowing it to be ſuch, *&c.*

The Perſon kill'd muſt be *in rerum natura*, for if a Woman take Poiſon to deſtroy the Child within her, being quick, 'tis not Felony, but a great Miſpriſion, unleſs born, and afterwards dies by this Means.

Striking in one County, and the Perſon dieth in another, the Trial ſhall be where he died.

But Acceſſary in one County to a Murder done in another, when the Principal is convicted, and that is certified, may be tried in the County where Acceſſary. *H. P. C. Fol.* 54.

Malice implied.

Malice is divided into Malice { Implied. / Expreſs.

Where

Where one killeth another without any Provocation, the Law implieth, and adjudgeth it to have proceeded of Malice prepenſe, and therefore 'tis

Malice implied, where one rides into a Crowd with an unruly Horſe, knowing him to be ſo, on purpoſe to do Miſchief, and Death enſues. *Moor* 754.

So by wilful poiſoning, or throwing a Stone over a Houſe among a Multitude of People.

So where a Man draws his Sword and attacks the firſt Man he meets; for by theſe and ſuch unlawful Acts it appears plainly, that the Doer had an evil Intention of doing Hurt to ſome Body, tho' not againſt any Perſon in particular; and this implies Malice. Caſes of it.

A Smith on a ſawcy Anſwer from his Servant, ſtruck him with an Iron Bar and kill'd him; ſo if a Parent corrects his Child, or a School-maſter his Scholar, with ſuch Inſtruments as may probably kill them, and Death enſues, 'tis Murder.

So if a Smith runs a red hot Iron into his Servant's Belly, or a Parent kicks and ſtamps on her Child's Belly, and Death enſues; in all theſe Caſes 'tis Murder, and the Law ſupplies the Malice in the Perſons who are guilty.

Nay, if a Man aſſaults another with a dangerous Weapon, and without any Provocation, 'tis Malice from the Nature of the Fact, which is cruel. *The Queen* v. *Maugridge.*

Two were beating another in the Street, and a Stranger paſſing by, ſaid it was a Shame for two Men to beat one; whereupon one of thoſe who was beating the other, ran and ſtabb d the Stranger; whereupon the two were indicted for Murder; but the Judges were of Opinion, that he which did not give the Wound could not be guilty of his Death, either as Principal or Acceſſary: 'Tis true, they were both doing an unlawful Act, but the Death of the Party did not enſue upon that Act; ſo he was acquitted, and the other was found guilty; and this agreed with the Caſe of the King and *Thomſon*, in *Keling* 61. *Trin.* 9 G. 1. at the *Old-Baily*, 9 *April.*

Poiſoning of another wilfully, whereby he dieth, is and was Murder by the Common Law.

The Party poiſoned muſt die within a Year and a Day after the receiving of the Poiſon.

Killing the Child in the Womb with a Poiſon, if quick, otherwiſe not Murder. 3 *Inſt.* 50.

After the beating or hurting another, to make Murder, or other Homicide, the Year and the Day is reckoned from the Stroke given.

An

An Appeal hath relation to the Death.

Words alone tho' never ſo opprobrious, nor any affronting Geſtures, tho' never ſo reproachful, cannot be a ſufficient Provocation for the killing a Man. 9 *Rep.* 67. *Cro.* 779.

But where there is a Pull by the Noſe, or a Fillip with a Finger, or a Breach of the Peace, 'tis only Manſlaughter.

If two Men fall out and give each other foul Words, and a third Perſon ſtrikes one of them, and kills him, this is Murder.

So if *A.* aſſaults *B.* without any Provocation, and draws his Sword and runs at him, and then *B.* draws his Sword in his own Defence, and is kill'd by *A.* 'tis Murder.

But if two Men fight, and another Perſon coming to part them killeth one of them, this is Manſlaughter, becauſe there was an actual Fighting and Striving with Violence between the other two.

If one who is wounded neglects his Cure, or lives diſorderly, yet if he die of thoſe Wounds, 'tis Murder or Manſlaughter, as the Caſe ſhall appear upon the Evidence againſt the Criminal, becauſe the Wounds were the principal Cauſe of the Death which enſued. *Kel.* 26.

Caſes of it.

Where a Man is ſtabbed without Weapon drawn, Malice is implied. 1 *Ja.* 1. *c.* 8.

Five Years after the making that Statute it was held, that if the Perſon kill'd had a Stick in his Hand, it is to be accounted a Weapon drawn.

By this Statute, ſtabbing another who hath not then any Weapon drawn, or who hath not firſt ſtricken, and the Perſon dying within ſix Months, this is Murder in him who ſtabs, and he ſhall not have Clergy. There is a *Proviſo* that the Act ſhall not extend to one who kills another, *ſe defendendo*, or by Misfortune, nor to one who in keeping the Peace, or chaſtizing his Servant or Child, ſhall unwillingly commit Manſlaughter.

Anno 9 *Car.* 1. One *Byard* ſtruck *Ward*, who ſtruck again, and then *Byard* ſtabbed the other with a Knife, the Queſtion was, whether he ſhou'd have his Clergy, becauſe he was ſtruck by the other before he ſtabb'd him; and adjudg'd he ſhou'd not, becauſe the Words firſt ſtricken in the Statute ſhall be conſtrued, the very firſt Stroke given by the Party ſlain at the Beginning of the Quarrel, and not to any Stroke before the Stab. *Jones Rep.* 348.

So

So where two quarrel, one throws a Pot at the other, which missing him, the other drew his Sword and kill'd him. On the Statute of stabbing, the Question was, if he shou'd have Clergy, and by the better Opinion it was held it shou'd relate to the Beginning of the Quarrel: For if in fighting one lets his Sword fall, or throws it at another, and is then killed, 'tis plain he had not then a Weapon, *viz.* at the Time of the Wound given, but yet because it was once drawn during the Quarrel, the Prisoner shall not be excluded his Clergy. 3 *Levinz* 255. 4 *Rep.* 51. 9 *Rep.* 66.

Anno 15 *Car.* 1. *David Williams* walking on St. *David*'s Day with a Leek in his Hat, was jeered by a Porter, and thereupon *Williams* took a Hammer out of *Marbury*'s Shop and threw it at the Porter with Intent to hit him, but he missed the Porter and struck *Marbury*, of which he died; the Question was, whether this was within the Statute of stabbing; for *Marbury* had no Weapon drawn; and adjudg'd that it was not: The Reason seems to be because he had no Anger or Displeasure against *Marbury*, and so was within the *Proviso* of the Statute, which exempts any killing by Misfortune, as this seemed to be. *Jones* 432.

But *Williams* was not indicted for Murder, but for Manslaughter, on the Statute of Stabbing; if he had been indicted for Murder, he ought to have been found guilty, for the Provocation was not so great as to excite him to kill another. *Kelynge* 133.

'Tis Murder to kill a Constable or any other Peace-Officer, or any assisting them in the lawful Execution of their Office, but then they must know he was coming to keep the Peace, &c. otherwise 'tis but Manslaughter in him who kills him.

So in killing a Bailiff, &c. in the lawful Execution of a lawful Warrant, tho' he do not shew it, being demanded, and tho' there is a Mistake or Error in the Process; but if he execute it in an unlawful manner, 'tis only Manslaughter. *Ma. ch.* 3. 1 *Cro.* 132, 183. 4 *Rep.* 91. *Cro. Car.* 386, 537.

An Officer had a Warrant to arrest Sir *H. F.* Knight, but he really was a Baronet and never Knighted, and the Officer was killed in executing this Warrant; this was held to be Manslaughter, because he had no Authority to arrest the Baronet, and so his Warrant was illegal. *Cro. Car.* 372.

All who are present and assisting a Person arrested, knowing of the Arrest, are principal Murderers, if the Officer is killed.

In

In 1 *Vent.* 216. There is a Caſe where a Collector of a Tax diſtrain'd a Piece of Plate in the Abſence of the Maſter, but was hindred from going out by a Servant, upon which he beat her againſt a Poſt and kill'd her; and this was held to be Manſlaughter. 1 *Vent.* 216.

Several come to rob a Park, and one kills the Keeper, 'tis Murder in all the others if in the ſame Park, tho' at a Diſtance when the Fact was done, becauſe their Entry was unlawful, and from thence Malice will be implied. *Palm.* 35. *Jones* 429. 2 *Roll. Rep.* 120. *Moor* 86.

Caſes of it. One Aſſaults another with an Intention to rob him, and being reſiſted kills the Perſon he aſſaulted; 'tis Murder.

So if a Gaoler by Famine or other hard Uſage kill a Priſoner. And ſo is executing Marſhal Law in Time of Peace.

If two fight in a Tavern and are parted, and one alledgeth the Inconvenience of that Place to fight in, and they appoint another Place and fight preſently, where one is killed, 'tis Murder, becauſe Reaſon had ſo much the Maſtery of his Paſſion as to judge of the Convenience of the Place. *Sid.* 277. 1 *Bulſt.* 86. 3 *Bulſt.* 171.

Yet where two Boys fought near their Father's Houſe, and one being bloody complain'd to his Father who was then a Mile off, but he went and beat the Boy ſo that he died, 'tis not Murder. *Godb.* 182. 2 *Cro.* 296.

Malice Expreſs. 2*d.* Malice Expreſs.

As if a Man is reſolved to do an unlawful Act, as to rob an Orchard, and the Owner come to hinder it and is killed, 'tis Murder in him who killeth him. 1 *Roll. Rep.* 363.

Malice between two, they fight tho' the deceaſed give the firſt Stroke, 'tis Murder in the other. 1 *Bulſt.* 86. 3 *Bulſt.* 171, 172.

Caſes of it. If the deceaſed challenge another who refuſeth to fight, but afterwards upon Importunity meeteth and kills him, 'tis Murder.

All who are preſent and aſſiſting are Principals. *Sid.* 160.

If they are not preſent, yet if they come to do an unlawful Act, and are in the ſame Houſe or Place, tho' at a Diſtance, 'tis Murder in them.

In a Riot at *May* Fair a Conſtable was kill'd, and not known by whom, *A.* was indicted for it and acquitted, *B. C. D.* & *E.* were indicted as Perſons preſent,

ſent, aſſiſting, aiding and abetting him therein; it was proved that *E.* firſt drew his Sword, and with ſeveral others aſſaulted the Conſtables, and that the Riot continued an Hour or more; it was held in this Caſe, that upon Proof of a Murder done, *E.* is a Principal, for he begun the Riot, which continuing till a Murder was committed, he is a Principal Murderer tho' he did not the Fact.

A Keeper of a Park finding a Boy ſtealing Wood, tied him to a Horſe's Tail, the Horſe ran away and kill'd the Boy; this was adjudg'd Murder, becauſe it was a malicious and deliberate Act, tho' perhaps Death was not intended. *Cro. Car. Hollaway's* Caſe 131. *Jones* 198. *Palm.* 547.

Where there is Malice between two, and the one ſtriking at the other killeth a third Perſon, 'tis Murder; and if no Malice between them, 'tis Manſlaughter.

Malice between two, and the one Aſſaulting the other kills his Servant coming to his Defence, Murder. *Dyer* 128.

One buys Poiſon to kill another, and a third Perſon eats it and dies, Murder. *Plowd. Com.* 437. 476. but ſuch Miſtake frees the Acceſſary before. *Black.* 198. Caſes of it.

Two or more come to do an unlawful Act, one of them kills a Man, 'tis Murder in both, if abetting or ready to aber, tho' but looking on. But then the Abettor muſt know the malicious Deſign of the other, and the Killing muſt be in Purſuance of that unlawful Act, and not collateral to it; and it muſt be done deliberately, for if 'tis upon a ſudden Affray and Death enſues, 'tis but Manſlaughter.

Two having Malice fight, the Servant of one of them not knowing the Malice, *&c.* killeth the other; this is Murder in the Maſter, and Manſlaughter in the Servant.

One commands another to kill a third Perſon with a Gun, he kills him not by ſhooting but with a Sword, 'tis Murder in the Perſon commanding.

But if by Miſtake he kills another Perſon, 'tis Murder in him killing, and the Perſon commanding is not ſo much as Acceſſary.

If one command another only to beat a third Perſon, and upon this Beating Death enſueth, 'tis Murder in the Perſon commanded, to which he who commanded is likewiſe Acceſſary, becauſe Death enſued upon the unlawful Act of Beating.

Some prohibited Goods were ſeiz'd at Sea, and brought to *Manſell's* Houſe, and one *Herbert* pretending

ing to be Deputy-Admiral came with Force to *Manſell*'s Houſe, and aſſaulted thoſe who kept Poſſeſſion of the Goods; a Gentlewoman came to the Door without any Weapon, and ſhe was kill'd with a Stone which was thrown by *Herbert*'s Servant at another, and this was held to be Murder in *Herbert* and all his Company; for the Woman was kill'd in Defence of the Houſe, and that made it Murder. *Moor* 87. *Dyer* 128. *b.*

The Judgment in Murder muſt be the common and ordinary Judgment allowed by Law, but when he is dead the Body is at the King's Diſpoſal, and therefore may be hung in Chains, tho' that cannot be Part of the Judgment.

Caſes of it. By the Stat. 24 *H.* 8. *c.* 5. 'Tis enacted, That if any Perſon be indicted for the Death of another attempting to murder, rob, or commit Burglary, and 'tis ſo found by Verdict, he ſhall forfeit no Lands or Goods, but ſhall be acquitted.

A Man in the Night was breaking open the Door of a dwelling Houſe, and one who was only a Lodger was diſſwading him from it, who thereupon broke the Window and thruſt his Rapier at the Lodger, who run a Spit into the Rogue's Eye, of which Wound he died; this was held to be no Felony, but excuſable by the Statute, tho' it was done by a Lodger, and not by the Maſter of the Houſe in Defence of his Poſſeſſion.

By a Stat. made 21 *Ja.* 1. *c.* 27. 'Tis enacted, That where a Baſtard Child ſhall be concealed, it ſhall be taken to be born alive, and if 'tis dead it ſhall be adjudg'd to be murder'd; ſo that Concealment of the Birth of a Baſtard is made the Crime. Now if a Woman is with Child of a Baſtard, and going well to Bed is taken with travelling Pains in the Night, and knocks for ſome Body to come and aſſiſt her, but is delivered without any Help, and then puts the Child in a Trunk, and conceals it for a Day, if there was no Sign of any Hurt upon the Body of the Child, this is not Murder within that Statute, becauſe there was no Intent to conceal it at its Birth. So that the Concealment being by the Statute made an Evidence of the Murder, the Indictment may be *quod infantem maſculum vivum parturiit, qui quidem infans maſculus adtunc & ibidem vivus exiſtens natus per legem hujus Regni Angliæ ſpurius fuit* (*Anglice* a Baſtard) and ſo on in the ordinary Form, and conclude *contra pacem*, and not *contra formam Statuti*; for the Statute doth not make any new Offence, but declares what ſhall be Evidence of the Murder. *Kelynge* 32.

Where

Where a Perſon is found guilty of Murder upon the Coroner's Inqueſt, *B. R.* may bail him, becauſe the Proceedings before him are upon Depoſitions in Writing, which may be ſeen by the Court; but if found guilty by a Grand Jury, he cannot be bailed, becauſe the Court cannot know what Evidence they had. Lord *Mohun*'s Caſe 9 *W.* 3.

Neither when a Bill is found *Billa vera* by the Grand Jury againſt a Man, ſhall he be bailed upon the Affidavits read of the Evidence, tho' it is not ſufficient to convict him, becauſe this may diſcourage a Proſecution.

Juſtices of the Peace have Authority to inquire of Murder, becauſe it is Felony, and the Statute 10 *Edw.* 2. *c.* 2. impowers Juſtices of Peace to hear and determine Felonies.

No Words, be they what they will, as to call a Man Son of a Whore, or to give him the Lye, *&c.* are in Law adjudg'd ſuch a Provocation, as for one Man to kill or wound another, unleſs upon the Words both the Parties ſuddenly fight. *Kelyng*'s *Rep.* 55. Lord *Motly*'s Caſe. Caſes of it.

When two Perſons are fighting and one is killed, thoſe who looked on, and did not uſe their beſt Endeavours to part them, may be indicted and fined. *Noy*'s *Rep.* 50.

If a Man happen to beat a Woman big with Child, and the Child when born hath Signs and Bruiſes in his Body receiv'd by the Battery, and afterwards the Child dies, this is Murder in him who beat the Woman; *contra* if the Child be born dead. *Gold.* 86. *Rep.* 876.

A Man goes with Malice *prepenſe* to fight with another and to kill him, and a third Perſon on a ſudden without Malice goes to part them, and they kill the other, this is Murder in him going with Malice, and Manſlaughter in his Companion. *Plow. Com.* 100.

If there be a Conſpiracy to kill a Man, but no Malice againſt his Servant, if the Servant be ſlain, the Malice againſt the Maſter ſhall be conſtrued to his Servant, and the killing the Servant is Murder; adjudg'd in *Salisbury*'s Caſe. 1 *Mar.*

It has been adjudg'd, that when one Man kills another, and no ſudden Quarrel appears, this is Murder, and it lieth upon the Party indicted to prove the ſudden Quarrel. *Kelyng*'s *Rep.* 26.

In arguing two Men grew to angry high Words, but afterwards they ſubdued their Paſſion, and fell into

to other Diſcourſe for a Space of Time, as one might reaſonably ſuppoſe they might be reconciled; but ſome Time after they drew one upon the other and fought, whereupon one of them was kill'd, and adjudg'd Murder. See *Kel. Rep.* 36.

A Smith chid his Servant, but upon ſome ſawcy Anſwer given by the Servant, he having a hot Iron in his Hand ran it into the Servant's Belly, of which he died, adjudg'd Murder. *Kel. Rep.* 64.

If a Man puts Poiſon into Drink with an Intention of Poiſoning another, and ſets it in a Place where he may probably come and drink it, and by Accident another comes and drinks it and dies, this has been adjudg'd Murder; for the Law couples the Event with the Intention, and the End with the Cauſe. For when a Man hath Malice to one, and intending and indeavouring to kill him, he killeth another Man, this is Murder, whomſoever he killeth; but preparing Ratsbane, and leaving it in proper Places to kill Rats and Mice, or other Vermin, and with no other Intent, is not Murder, tho' one finding it ſhall eat thereof and die. *Trin.* 9 *Ja.* 1.

If a Woman big with Child take Poiſon to deſtroy it within her, it is not Felony, but only a great Miſpriſion; but if the Child be born alive, and afterwards die thro' this Poiſon, 'tis Murder. And an Adulterer who counſell'd a Woman to kill her Infant, when it ſhould be born, was adjudged Acceſſary. *Dyer* 186.

A young Woman of the Age of thirteen Years was burnt for killing her Miſtreſs. *Trin.* 12 *Edw.* 3.

J. S. with an Intention to kill his Wife gave her a poiſon'd Apple, ſhe not knowing of it gave it to her Daughter who died thereof; this is Murder in the Father i and ſo it had been if a Stranger had found it accidentally. *Plowd.* 474. 8 *Rep.* 44. 9 *Rep.* 81.

If an Officer, who being appointed and authorized to whip, or with a hot Iron to burn or brand, or otherwiſe to puniſh an Offender, ſhall do it with ſuch Rigour in ſuch extream manner, as that the Offender by reaſon and means thereof dieth, 'tis Murder.

If a Man perſwades another to kill himſelf, and be preſent when he doth it, he is a Murderer.

So if a Man ſhall leave an Infant, or other Perſon who cannot go, in a Deſart, or By-Place, *&c.* where no Perſon uſually comes, by reaſon whereof ſuch Infant, *&c.* dies for want of Succour, 'tis Murder.

Where Fights grow from ſettled Determinations and Purpoſes to kill, all Deaths happening by ſuch

Fights

Fights upon Challenges are Murder. *Paſ.* 14 *Jac.* 1. 2 *Roll Rep.* 260.

If two fight upon Malice prepens'd, and in their Fight a Stranger that would part them cometh between them, and is kill'd, this is Murder in them both. *Dyer* 128. *Plo.* 474.

N. B. That in all Caſes, where a Man cometh to do any Thing unlawful; as to kill, beat, or diſſeize another, or to do any other Treſpaſs, and in doing this he killeth any Man, this is Murder.

One was ſtealing Pears in another Man's Orchard, and the Owner came and rebuked him, and the other killed him; this was adjudged Murder. 4 *Mariæ.*

Whenever divers Perſons come in one Company, (and as Confederates in the Fact) to do any unlawful Act, as to rob or beat any Man, or to commit any Riot or Affray, *&c.* and one of them in doing thereof killeth a Man, this is Murder in them all. So all that are preſent, and aiding, abetting, or comforting to another to do Murder, are principal Murderers, altho' they give never a Stroke. *Co.* 9. 67, 112, and 11, 15.

N. B. In Murder it is not material who giveth the firſt Blow; for if he who is ſlain gave the firſt Blow, yet if there were Malice prepenſe in the other, it is Murder in him who killeth him; but a bare Intent to commit Murder or Felony is not puniſhable, unleſs the Act be done.

Where a Man is hurt, the Party hurt muſt die within a Year and a Day next after the Hurt done, or Stroke given; but to have an Appeal, it ſhall have Relation to the Death and not to the Stroke; ſo as the Appeal muſt be brought within the Year after the Death, and not after the Stroke.

In Caſes of Murder the Offenders ſhall not have the Benefit of Clergy. *For Murder defileth the Land, and the Land cannot be cleanſed of the Blood that is ſhed therein by Wilful Murder, but by the Blood of them who ſhed it.* Numb. xxxv. 31, 33.

Caſes of it.

And by divers old Statutes no Charter of Pardon ought to be granted to any Perſon in Caſe of Murder, or other Homicide, ſaving only where the King may do it by his Oath, *viz.* Where a Man killeth another in his own Defence, or by Misfortune. 6. *Edw.* 1. *c.* 9. 2 *Edw.* 3. *c.* 2. 4 *Edw.* 3. *c.* 13. & 14 *Edw.* 3. *c.* 15.

And by our Law at this Day a Pardon of all Felonies will not diſcharge Murder, except the Pardon be

with a *Non Obſtante*, &c. or that Murder be expreſly mentioned in the Pardon. *Co.* 6. 13. *b.*

Neither will a Pardon of all Felonies diſcharge a Man that is attainted of Felony, except alſo the Attainder and the Execution be pardoned. 9 *Ed.* 4. 29. *Co.* 6. 13. *b.*

All the Judges of the *K. B.* held clearly, that Juſtices of Peace have Authority to enquire of Murder, becauſe it is Felony. *Paſch* 25 *H.* 6. *Trin.* 22 *H.* 7. *Kelynge's Rep.* 91. *Stat.* 10 *Ed.* 2. enables Juſtices of Peace to determine Felonies.

A Man may be indicted for the Murder of a Man unknown. *Plowd.* 85. *March* 129.

If Husband and Wife join in Murder, they are both equally guilty; ſo reſolved by all the Judges. 16 *Car.* 2. *Kel. Rep.* 31.

Caſes of it.

In Caſe of a Baſtard Child, it was agreed by the Judges, that if there be an Intent in the Mother to conceal the Child, then it is Murder by the Statute, tho' in Truth the Child was dead born; but if there was no Intent to conceal it, or if ſhe confeſs her ſelf with Child before-hand, and after ſhe is ſurprized and delivered, no Body being with her, this is not within the Statute, becauſe there was no Intent to conceal it; and therefore if there be no Sign of Hurt upon the Child, it it is no Murder. *Kelyng's Rep.* 32.

A Woman kick'd her Child, and ſtamp'd upon her Belly, whereof ſhe died, and adjudged Murder. *Kelyng's Rep. p.* 64.

A Man *Non Compos Mentis* ſhall not loſe his Life, nor forfeit any Thing for Murder or Felony. *Mich.* 27 *H.* 7. 31 *P.* 4 *Ed.* 6. *Plow.* 19. 2 *Roll.* 324. *Co.* 4. 124. *Hob.* 134. *Plow.* 260. *Paſ.* 1 *Ja.* 1. *B. R. Co.* 4. *Rep.* 124 *Beverly's Caſe.*

If one who is *Non Compos Mentis* kill a Man, this is no Felony, for he cannot have a felonious Intent, and no Felony or Murder can be committed without a felonious Intent and Purpoſe; and *actus non facit reum niſi Mens ſit rea*, and a Madman is *Amens quaſi ſine Mente.*

Tho' if another Man ſhall upon Malice procure a Madman to kill another, tho' the Madman ſhall be excuſed, yet the Inciter or Procurer ſhall be puniſhed as a Principal.

An Infant of eight Years of Age, or above, may commit Murder, and be hanged for it, if it may appear (by hiding the Perſon ſlain, by excuſing it, or by

by any other Act) that he had Knowledge of Good and Evil, and of the Peril and Danger of the Offence. *Co.* on *Lit. f.* 147. *écontra* under fourteen Years of Age.

One of nine Years old kill'd one of nine Years old, and hid the Body; adjudged Murder. *Hill.* 3 *H.* 7. *Beverley*'s Case.

But if an Infant of such tender Years, as that he hath not Discretion or Intelligence, kill a Man, that is not Felony in him; for where such Acts happen thro' involuntary Ignorance, there the Law doth not account such Act to be Felony.

But if a Man who is drunk commit Murder he shall die for it; for a Drunkard is *Voluntarius Dæmon*, and what Hurt or Ill soever he doth, his Drunkenness doth aggravate it.

Of Indictments for Murder.

IF several are indicted for Murder, the Jury cannot find *Billa vera* as to one, and Manslaughter in the other; for if they find it so, a new Bill shall be preferred against those who are found guilty of Manslaughter. 3 *Bulst.* 206. 1 *Roll. Rep.* 407, 408.

If a Man is indicted for Murder they cannot find *Billa vera Se defendendo*, for that is contradictory; and the Defendant must be indicted *de novo*. 2 *Roll. Rep.* 52.

The Place where the Stroke was given must be set forth in the Indictment; and therefore it is not sufficient to say, that he assaulted the Person, and that he gave him a mortal Wound, without saying in what Place. 2 *Bulst.* 293. The Place where.

Two Men quarrelled and fought in a Park *juxta Knowl*, and one was killed, for which the other was indicted; but it did not set forth in what Place or County the Park was; neither was the Word *Percussit* in the Indictment, but *dedit Vulnus*; and for these Reasons it was quash'd,

So when it was *Percussit cum gladio*, but did not say *felonice*. Cro. Eliz. 193. *ex Malitia sua præcogitata murdravit*, is good without the Word *Percussit*. *Dyer* 95. 5 *Rep.* 112. 2 *Cro.* 25. 1 *Bulst.* 109. It must be said felonice.

The Stroke was said to be *super sinistram Partem Lateris*, and did not shew in what Part, and this was held certain enough; because 'tis well understood

what is meant by the Word *Latus*; but where it was *cum Pugione in ſiniſtra Parte Collis percuſſit*, this was held ill; for it ſhould have been *Colli*. So where the Stroke was alledged to be given at *D.* whereof the Plaintiff died at *S.* & *ſic apud D.* he killed him, this is impoſſible. *Noy* 45

Where the Reference is to the Day of Death.

Where it was that on the 22d *Januar'*, &c. *percuſſit* the Perſon at *B. dans ei Plagam mortalem*, &c. of which he died 23 *Feb.* following; and ſo he murdered him *Die &c. pred.* that muſt refer to the Day laſt mentioned; for otherwiſe there being two Days mentioned it would be uncertain to which it ſhould relate, *viz.* either to the Day of the Stroke, or Death. *Cro. Eliz.* 739.

Indictment for Murder muſt expreſly have *Murdravit*; for *ex Malitia ſua præcogitata & voluntarie & felonice interfecit* is not ſufficient. 4 *Co.* 39, *b. Dyer* 304. but *ex Malitia ſua præcogitata Murdravit* is good without *percuſſit*. *Dyer* 25. 5 *Rep.* 112. *b.* 2 *Cro.* 95. 1 *Bulſt.* 109. Day on a languiſhing Death how to be ſet forth. 1 *Bulſt.* 203. *Cro. El.* 739. 793.

An Indictment for Murder with a Sword.

Dyer 304.

Eſſex, ſſ. JURR', &c. quod D. E. nuper de H. in Com' prædd Yeoman Deum præ Oculis non habens ſed inſtigatione Diaboli motus & ſeductus ſexto die Auguſti Anno Regni, &c. circa horam nonam poſt Meridiem in nocte ejuſdem diei apud H. prædd in Com' prædd vi & Armis in & ſuper quendam A. C. in pace Dei & dict' Dom' Reg' ad tunc & ibidem exiſten' inſultum fecit & prædict' A. C. cum gladio ad valentiam trium ſolidorum quem idem D. E. in manu ſua dextra adtunc & * ibidem extract' habuit & tenuit felonice voluntarie & ex malitia ſua præcogitata prædd A. C. apud H. prædd in Com' prædd percuſſit & vulneravit & eidem A. C. apud H. prædd in Com' prædd felonice & ex malitia ſua præcogitata cum gladio prædd unum vulnus mortale in & ſuper dextram partem tibie ſue dedit longitudinis trium pollicium & profunditatis duorum pollicium de quo quidem vulnere mortali idem A. C. a prædd ſexto die Auguſti Anno ſuprædicto uſque nonum diem ejuſdem menſis Auguſti apud H. prædd in Comitatu prædd languebat & languidus vixit quo quidem nono Die Auguſti Anno ſuprædicto prædd A. C. apud H. prædd in Com' prædd de vulnere mortali prædd † Obiit & ſic jur' prædd ſuper Sacramentum ſuum prædd dicunt quod prædd D. E. prædd nono

* If ibidem had been omitted, the Indictment would have been ill.

† If he died preſently, then ſay, Inſtanter obiit.

nono die Auguſti Anno ſupꝛadicto apud H. pꝛed' in Com' pꝛed' pꝛefatum A. C. modo & foꝛma pꝛed' ex Malitia ſua pꝛecogitata felonice & voluntarie interfecit & murdꝛavit contra pacem dict' Dom' Reg' Coꝛon' & Dignitatem ſuas.

* This Word doth ſupply ex malitia ſua precogitat' Dyer 68. contra 99 404. Cro. Eliz. 900.

Murdravit is neceſſary in an Indictment, becauſe Clergy is not allow'd for Murder.

Upon the Statute of Stabbing, 1 *Ja.* 1. *c.* 8.

Eſſex, ſſ. JURꝛ', &c. quod A. D. nuper de H. in Com' pꝛed' Yeoman Deum pꝛe Oculis ſuis non habens ſed, &c. Sexto die Auguſti Anno Regni, &c. vi & Armis, &c. apud H. pꝛed' in Com' pꝛed' in & ſuper quendam O. N. † in pace Dei & dict' Dom' Reg' adtunc & ibidem exiſten' pꝛed' O. N. non haben' aliquod telum tunc extractum (Anglice a Weapon then drawn) nec impꝛimis percutien' pꝛed' A. D. felonice inſultum fecit & quod pꝛed' A. D. cum quodam gladio ad valentiam quinque ſolidoꝛum quem ipſe idem A. D. in manu ſua adtunc & ibidem habuit ventrem ipſius O. N. adtunc & ibidem felonice percuſſit & pupugit pꝛed' O. N. non haben' telum adtunc extractum & non impꝛimis percutien' ibid' pꝛed' A. D. & ipſe idem A. D. apud H. pꝛed' in Com' pꝛed' cum gladio pꝛed' unum vulnus moꝛtale pꝛefat' O. N. in & ſuper ventrem ſuum pꝛed' dedit latitudinis unius pollicis & pꝛofunditat' duoꝛum pollicium de quo quidem vulnere Moꝛtali pꝛed' O. N. adtunc & ibidem inſtanter obiit & ſic Jurꝛ' pꝛed' ſuper Sacramentum ſuum dicunt quod pꝛefat' A. D. pꝛed' O. N. pꝛefat' ſexto die Auguſti apud H. pꝛed' in Com' pꝛed' modo & foꝛma pꝛed' felonice interfecit & * murdꝛavit contra pacem dict' Dom' Reg' Coꝛon' & Dignitat' ſuas & contra foꝛmam Statut' in hujuſmodi caſu edit' & pꝛovis'.

† These Words muſt be in, for he may be a Traitor, and flying, and ſo lawful to kill him. Godb. 64.

* If that Word is not in, 'tis no more than Homicide. Dyer 261. a. 394. b.

For Strangling of a Baſtard Child.

Eſſex, ſſ. JURꝛ', &c. as in the former Precedent to the Word Vivum clam & ſecrete e coꝛpoꝛe ſuo vivum parturiit qui quidem Infans maſculus ſic vivus & natus exiſtens per leges hujus Regni Angliæ ſpurius fuit (Anglice a Baſtard) & quod pꝛed' D. S. Deum pꝛe oculis non habens ſed inſtigatione Diaboli mota & ſeducta dicto ſeptimo Die Auguſti Anno ſupꝛadicto & quam cito

Dyer 186. A good Precedent.

Infans pred' natus fuit vi & armis, &c. apud H. pred' in Com' pred' in & super eundem Infantem masculum vivum existen' in pace Dei & dict' Dom' Reg' adtunc & ibidem felonice voluntarie & er malitia sua prœcogitata insultum fecit & pred' D. S. eundem Infantem spurium sic vivum existen' felonice voluntarie & er malitia sua prœcogitat' cum manibus suis circa collum Infantis vivi pred' firatis apud H. pred' in Com' pred' suffocabat de qua quidem suffocatione pred' Infans spurius adtunc & ibidem instanter obiit & sic, &c. & insuper Jur' pred' super sacr'um suum ulterius dicunt quod E. M. nuper de H. pred' in Com' pred' Spinster 7 die Augusti Anno Regni, &c. ac diversis aliis diebus & vicibus ante feloniam & murdrum pred' in forma pred' perpetrat' apud H. pred' in Com' pred' malitiose & felonice consuluit procurabit & abettavit prefat' D. S. murdrum pred' facere & ad interficiend' & murdrand' dictum Infantem contra pacem, &c. & insuper quod L. M. de H. pred' in Com' pred' & T. P. de eodem Spinster post murdrum & feloniam pred' in forma pred' fact' scientes prefat' D. S. murdrum & feloniam pred' fecisse & perpetrasse prefat' D. S. apud H. pred' in Com' pred' nono die Augusti Anno supradicto felonice receperunt contra pacem, &c.

If the Preposition *de* had been omitted the Indictment had been ill. 1 Rol. Rep. 135.

A Condition of a Recognizance to prefer a Bill of Indictment, and to give Evidence at the next General Gaol-Delivery, or Assizes, to both Juries in Case of Murder.

THE Condition of this Recognizance is such, that if the above bound W. B. *do personally appear before her Majesty's Justices of Gaol-Delivery at the next General Gaol-Delivery, to be holden for the within named County of* Kent, *and do then and there prefer or cause to be preferred a Bill of Indictment against* A. B. C. D. E. F. G. H. *and* J. K. *for the Murder of* L. M. *Gent. deceased, wherewith the said* A. B. *and* C. D. *are charged before the within named Justices, and with Suspicion whereof the said* E. F. G. H. J. K. *are also charged before the Justices aforesaid, and do also then and there give such Evidence as he knoweth concerning the Murder aforesaid, as well to the Jurors who shall enquire thereof for our Sovereign Lord the King, as also to the Jurors who shall pass upon the Trial of the said* A. B. C. D. E. F. G. H. J. K. *or any of them, for the same, then this Recognizance shall be void, or else it shall stand in full Force and Virtue.*

7thly,

7thly, Felo de se.

IS one who committeth Felony by murdering himself voluntarily. Who is Felo de se.

The Person who is guilty of that Offence must be,

1. Of the Age of Discretion.
2. *Compos Mentis.*
3. The Act must be voluntary.
4. Death must ensue within a Year and a Day after the Stroke or Wound, otherwise no Forfeiture of Goods is incurred.

Yet in some Cases the Act may be involuntary; as if I am assaulted, and draw my Sword to defend myself, and happen to fall down, and the other, pursuing his wicked Purpose to kill me, falls upon my Sword, and kills himself, he is *Felo de se.* Sir *Fran. Bacon*, 4, 5. When the Act is involuntary.

But if without being actually assaulted I am only in Danger thereof, and thereupon draw my Sword in my own Defence, and another runs upon my Sword, and kills himself, he is not *Felo de se.*

The Conviction must be by the Oath of twelve Men before the Coroner, *super Visum Corporis*; and when his Inquisition is returned and filed, 'tis not traversable. *Sid.* 92. 1 *Vent.* 278. *contra.* Conviction.

If the Body cannot be found, &c. then the Enquiry may be before the Justices in the Sessions; and this is traversable. 3 *Inst.* 55. *Hale's P. C.* 29. *Pas.* 43 *Eliz. B. R. Co.* 5. 110. *Foxley's* Case. 2 *Car.* 1. *Poph.* 204. 1 *Roll. Rep.* 17. *Trin. Jac.* 1. *Mich.* 15 *Car.* 1. *Newman's* Case. *Roll. Abr.* 96.

So if the Enquiry be in *B. R.* in the same County, 'tis traversable by Executor or Administrator.

The Coroner's Inquest found, that *Seipsum felonice submersus fuit*, he was order'd to attend *B. R.* to amend it; for it should be *jecit seipsum in Aquam*, &c. *Sid.* 259.

If a Presentment is made before a Coroner, that a Man was *Felo de se*, and that he had Goods in the Possession of *S.* this Presentment must be certified into *B. R.* upon which Process out of the Crown Office issues against *S.* and 'tis continued till he is outlaw'd. 2 *Leon.* 200.

Felo de se, his Forfeiture of Goods in Possession is not to be set aside by a Bill of Sale before. *Blac.* 204.

The Forfeiture.

The Forfeiture is of all Goods and Chattels, and Debts due upon Specialties, which the Party had at the Time of the Wound given; for it relates to that Time, and not to the Death.

Melius inquirendum.

A *Melius Inquirendum* is not granted but where there is a Miſdemeanor in the Coroner. *Vent.* 182, 352.

How a Pardon operates.

In a Pardon of all Offences, &c. except Murder, a *Felo de ſe* is under the Exception; for to kill one's ſelf is againſt the Law of Nature, and no Vengeance can be had againſt one who is *Felo de ſe*, therefore his Goods, &c. are forfeited to the King for depriving him of the Benefit of a Subject. 1 *Levinz* 8. *Dyer* 160.

All the Goods and Chattels, and Debts due upon Specialties of a *Felo de ſe* are forfeited to the King, but not till his Death is found by the Coroner.

A Leaſe for Years is made to Husband and Wife, the Husband is *Felo de ſe*, the Leaſe is forfeited. *Plow.* 258.

Debt due on ſimple Contract to *Felo de ſe*, is not forfeited to the Crown. *Paſ.* 9 *Eliz. Dyer* 262.

An Infant, or Non Compos Mentis, Felo de ſe forfeits nothing.

If an Infant, or a *Non Compos Mentis* kill himſelf, he forfeits nothing, and ſo a Lunatick, if the Blow, &c. (which was the Cauſe of his Death) be given during his Lunacy, though he die thereof when he is of ſound Memory. *Stamf.* 19. *Co.* 1. 99 *b.* & 4. 42. *Fitz. Coron.* 244. *Pl.* 260. *Paſ.* 22 *Edw.* 3. *Mich.* 4 & 5 *Eliz. Plow.* 260.

How their Goods are diſpoſed of.

Their Goods are uſually granted and allowed by the King to the Lord Almoner, to be diſpoſed of as Deodands are; but their Lands are not forfeited, neither ſhall their Blood be corrupt. *Fitz. Coron.* 362, & 426.

The Goods of *Felo de ſe* cannot be claimed by Preſcription, (by Lords of Liberties, &c.) but by the King's Grant. *Co.* 5. 110. 21 *H.* 7. 33.

A Man bound with two Sureties for 40*l.* to be paid at two Days by Indenture, ſold them Beaſts for 40*l.* paid; provided, that if he ſaved them harmleſs the Sale ſhould be void; he failed the firſt Payment, and afterwards he became *Felo de ſe*; and the Beaſts having been always in his Poſſeſſion, adjudged that they were forfeited. *Dyer* 160.

A. diſcharges a Musket with a felonious Intent at *J. S.* and miſſeth him, and it breaks, and kills him who fired it, he is a *Felo de ſe*. Dalt. c. 144.

Hops.

ONE Juſtice hath Power to adminiſter an Oath to Officers to make a Charge on Hops.

Pickers or Gatherers of Hops, and others, privately conveying Hops from the Place of growing, or the Place where the ſame ſhall be put, in Order to be cured, bagged, and weighed, ſhall forfeit 5*s.* for every Pound, to be levied by Diſtreſs and Sale; and if no Diſtreſs, the Offender is to be committed to the Houſe of Correction, for any Time not exceeding one Month.

If any Perſon ſhall obſtruct or abuſe the Officer in his Duty, he ſhall forfeit 5*l.* to be levied *ut ſupra.* Stat. 9 *Ann. c.* 12.

Horſes.

BY the Stat. of 2 & 3 *Ph. & M. c.* 7. which was made to prevent Horſes being ſtolen and ſold in Stables and private Places, it is provided, That Owners of Fairs and Markets ſhall appoint a Toll-taker or Book-keeper, to ſit in the Fair from Ten in the Morning till Sun-ſet, and the Toll-taker is to enter into his Book the Names and Places of Dwelling of both Buyer and Seller, and the Colour and Marks of the Horſe ſold, or ſhall forfeit 40*s.* as ſhall likewiſe all ſuch Owners of Fairs, *&c.* for every Default of appointing Toll-takers, *&c.* And the Book in which the Entry is made muſt be delivered to the Owner or Keeper of the Fair a Day after the ſame is over, who is to make out and ſubſcribe a Note of the Horſes ſold, on Pain of 40*s.*

The Method of ſelling Horſes in Markets and Fairs.

But the Property of ſtolen Horſes ſhall not be altered,

How the Property is altered, &c.

1. Unleſs they are rid, or ſtand in the open Fair one Hour.

2. All Parties to the Contract muſt be preſent with the Horſe, and before the Book-keeper.

3 Their Names and Dwellings, and Colour and Mark of the Horſe muſt be enter'd in the Book, as above.

Juſtices in Seſſions have Power to hear and determine Offences againſt this Law.

And for the further Preſerving the Property of ſtolen Horſes in the Owners, another Stat. was made 31 *Eliz. c.* 12. which enacts,

1. That

1. That no Sale ſhall be made in Fairs, unleſs the Toll-taker or Keeper know the Seller, or unleſs he bring ſome credible Perſon who knows him.

2. The Names, Sirnames, Profeſſions, and Dwellings of both of them, and the Price of the Horſe ſold muſt be enter'd in the Book.

3. The Book-keeper muſt give the Buyer a Note, of theſe Particulars ſubſcribed by him, if required paying 2 *d.* for the ſame.

4thly, He who ſells an Horſe, without being known to the Book-keeper, or without bringing a Voucher, and he who voucheth without knowing the Seller, and the Book-keeper making Entry without knowing either, forfeit each of them 5 *l.* one Moiety to the King, the other to the Proſecutor, and the Sale is void.

Yet the Property not bound if claimed in 6 Months.

And yet tho' the Sale be in all Circumſtances purſuant to this Act, yet the Property is not bound, if the right Owner claim within ſix Months after 'tis ſtolen, which he muſt do in this Manner.

If the Horſe is found in a Town Corporate, then he muſt claim him before the Mayor or chief Officer; if in the County at large, then before a Juſtice of Peace.

The Proof muſt be by two Witneſſes upon Oath, within forty Days after the Horſe is found, that the Property is in the Perſon claiming, &c. and that the Horſe was ſtole from him within ſix Months next before the Claim.

Upon this Proof the Party ſhall have his Horſe again, paying the Buyer what he muſt ſwear he gave for the ſame.

Acceſſaries both before and after the Fact are debarred from their Clergy.

Selling an Horſe by a falſe Name maketh the Sale void. *Owen's Rep.* 27.

An Action does not lie for warranting an Horſe to have both his Eyes, and he hath but one, becauſe it is in the Buyer's Conuſance. 2 *Cro.* 387.

To preſerve a Breed of ſtrong Horſes.

For the Preſervation of a ſtrong Breed of Horſes, by 32 *H.* 8. *cap.* 13. Stone-horſes above two Years old, and under fifteen Hands high, (every Hand being four Inches) ſhall not be put into Foreſts or Commons, where Mares are kept, upon Pain of forfeiting the Horſe.

Juſtices in Seſſions may hear and determine Offences againſt this Act, and Stewards in Leets may take Preſentments only, but muſt certify them to the next Seſſions upon Pain of 40 *s.*

But by Stat. 8 *Eliz. c.* 8. and 21 *Jac.* 1. *c.* 28. this Statute is not to extend to the Fen-Grounds in *Ely*, nor to the Counties of *Cambridge*, *Huntingdon*, *Northampton*, *Lincoln*, *Norfolk*, and *Suffolk*, nor to the County of *Cornwall*, ſo that the Horſes there kept are not under thirteen Hands.

By Stat. 22 *Car.* 2. *c.* 13. Any Horſe may be exported, paying 5 *s.* at the Cuſtom-houſe.

N. B. Every Contract for any ſtolen Horſe, *&c.* made out of open Fair or Market is void, tho' they be after booked. *Dyer* 99.

A Sale in a Fair or Market-Overt ſhall not take away the Owner's Property, where the Buyer doth know that the Property was to another Man, or where the Buyer knoweth that the Horſe, or other Goods were ſtolen.

Alſo a Sale upon a *Sunday*, tho' in a Fair or Market-Overt, ſhall not alter the Property of the Goods.

Sale to a Pawn-broker, tho' in his Shop, alters no Property, 'tis not a Market-Overt. *Kelynge's Rep.* 50. Stat. 1 *Jac.* 1. *c.* 21.

Indictment againſt an Horſe-ſtealer and his Acceſſary after the Fact.

Eſſex, ſſ. JURʼ, &c. quod A. B. nuper de M. in Comʼ prædʼ Yeoman, 24 die Junii Anno Regni, &c. vi & armis apud H. prædʼ in Comʼ prædʼ unum ſpadonem (Anglice vocatʼ a Gelding) coloris nigri & pretii decem librarum de bonis & catallis cujuſdam S. K. adtunc & ibidem inventʼ felonice cepit & abduxit contra pacem dicti Domini Regis nunc coronʼ & dignitatʼ ſuas & quod J. G. nuper de H. prædʼ in Comʼ prædʼ Labourer ſciens prædictʼ A. B. Feloniam prædʼ apud H. prædʼ modo & forma prædʼ feciſſe & perpetraſſe eundem A. B. apud H. prædʼ in Comʼ prædʼ die & anno ſuprædictis felonice recepit comfortavit & auxiliatus eſt poſt feloniam prædʼ ſic per ipſum A. B. ut præfertur commiſſum contra pacem, &c.

Houſes of Habitation.

THESE are privileged by the Law in many Reſpects, and are Caſtles for the Defence of the Inhabitants, and protect them from any Arreſts on meſne Proceſs at the Suit of any Subject. A

A Houſe may be defended by Force againſt Thieves or Robbers, and if kill'd 'tis not Felony.

Yet notwithſtanding theſe Privileges, it may be broke open in theſe Caſes following, the Perſon firſt ſignifying the Cauſe of his Coming, and requiring the Opening the Doors, and being refuſed.

1. In Treaſon, Felony, or Suſpicion thereof.

2. To apprehend one who hath dangerouſly wounded another, being freſhly purſued.

3. When an Affray is in a Houſe, the Conſtable, on his being refuſed Entrance, may break it open to keep the Peace.

4. Upon a Forcible Entry or Detainer found by an Inquiſition.

5. To apprehend any Perſon upon a *Capias Utlagatum*, or Fine, or upon Proceſs of Excommunication, or upon a Warrant of the Peace, or good Behaviour.

6. Upon a Recovery in a Real Action, the Sheriff may break it open to deliver Poſſeſſion, ſo to make Execution of a Stranger's Goods, the Door being ſhut againſt him, requeſting to enter. 5 *Co.* 93. *a.*

7. And generally in any Caſe where the King is Party, or hath any Intereſt; for no Man's Houſe ſhall protect him againſt the King.

A ſmall Houſe without Land, is a Cottage.

A Houſe or Meſſuage contains the Building, Curtilage, Orchard and Garden. 1 *Inſt.* 56. *b.*

How Houſes and Windows are taxed.

7 & 8 W. 3. cap. 18.
8 & 9 W. 3. cap. 20.
1 Ann. c. 13.
5 Ann. c. 13.
7 Ann. c. 13.
7 Ann. c. 7.
8 Ann. c. 4.

By Stat. of 7 & 8 *W.* 3. *cap.* 18. A Duty was laid on Houſes and Window-Lights for Thirty-two Years; but by 5 *Ann. c.* 13. continued for ever; every Dwelling-Houſe inhabited, except a Cottage, ſhall pay 2 *s.* yearly, Houſe having ten Windows 4 *s.* over and above the Sum of 2 *s.* Houſes with twenty Windows 8 *s.* over and above the 2 *s.* Aſſeſſors by this Act to take the Oaths; Clerks to have 1 *d. per* Pound by Warrant under two Juſtices Hands for the Receiver General. Two or more Juſtices may appoint Collectors. Thoſe who do not pay to Church and Poor are excepted.

By a later Statute, every Dwelling-Houſe having twenty Windows, and under thirty, to pay 10 *s.* a Year; every Dwelling-houſe having thirty Windows to pay 20 *s.* yearly, over and above what was laid on them before. Juſtices to be Commiſſioners for Duty on Houſes. Theſe new Duties granted for 30 Years.

And every Edifice in the Univerſities having twenty Windows in the ſeveral Tenure of any one Perſon is chargeable with the Duty.

By

By Stat. 6 *Geo.* 1. *cap.* 21. Juſtices of Peace within their Limits have Power to appoint two Perſons in every Pariſh to be Collectors of the Duties on Houſes, whether their Names be, or be not preſented by the preceding Collectors, according to the former Statutes. 6 *Geo.* 1. *cap.* 21.

And if there happen to be any Arrears of the ſaid Duties by reaſon of the Failure of any Collector, for which the Pariſh is anſwerable, the Juſtices are to cauſe the ſame to be re-aſſeſſed on all ſuch Houſes as are liable to the Duty, to be levied and paid to the Receiver-General of the ſaid Duties.

An Appointment by Juſtices of the Peace, of Collectors of the Duties on Houſes.

WE A. B. *and* C. D. *Eſqrs*; *two of His Majeſty's Juſtices of the Peace for the County of*, &c. *do hereby appoint* E. F. *and* G. H. *of*, &c. *to be Collectors of the Duties on Windows in the Pariſh of*, &c. *for the Year enſuing, according to the Direction of the Statute in that Caſe made. And in Caſe any Perſon ſhall refuſe to pay the ſaid Duties to the ſaid* E. F. *and* G. H. *We do hereby impower them to levy the ſame by Diſtreſs and Sale of the Goods and Chattels of the Perſon or Perſons ſo refuſing.* Given, &c. 6 Geo. 1. c. 21.

Houſes of Correction.

THE Stat. of 39 *Eliz.* *cap.* 4 gives Power to the Juſtices in Seſſions, for the Erecting one or more Houſe or Houſes of Correction in every County, at the Charge of the County; and for the Maintenance and Government of the ſame, and for the Puniſhment of Offenders committed hither, 39 *Eliz.* *c.* 4. this Statute at firſt temporary was continued by 3 *Car.* 1. and was further reinforced by the Statute of 7 *Jac.* 1. *cap.* 4. by which 'tis enacted, that in every County there ſhall be a Houſe of Correction built with all Conveniencies, for the ſetting of Rogues and idle People to Work, or every Juſtice ſhall forfeit 5 *l.* one Moiety to the Proſecutor, and the other towards building the Houſe; and theſe Houſes when built or purchaſed, ſhall be conveyed to Perſons appointed by Juſtices in Seſſions, in Truſt to be imployed, for the Keeping,

Houſes of Correction to be erected.

One in every County, or the Juſtice forfeits 5 l.

Keeping, Imploying and Correcting Perſons ſent thither. And Juſtices in Seſſions are to appoint Governors or Maſters of ſuch Houſes of Correction, and their Salaries, which are to be paid quarterly by the Treaſurer out of the County Stock. *Ibid.*

Governors of ſuch Houſes to be appointed bythe Seſſions.

Governors Duty, &c.

Theſe Governors are to ſet the Perſons ſent on Work, and moderately to correct them by Whipping or Fettering them, if unruly, and are to yield a true Account every Quarter-Seſſions of Perſons committed to their Cuſtodies; and if they ſuffer any to eſcape, the Juſtices may fine them at Diſcretion, which Fine is to be paid to the Treaſurer of the County-Stock. *Ibidem.*

Who may be ſent to the Houſe of Correction by Warrant of two Juſtices.

The Houſe of Correction is for the puniſhing of the Poor who refuſe to work, who are to be there whipped, and ſet to work. 2 *Bulſt.* 358. As alſo by Warrant of two Juſtices, Ale-houſe-keepers ſelling Ale without Licence after Conviction. Perſons running away, or, upon the Oath of two Witneſſes, threatning ſo to do, and to leave their Families to the Pariſh; Parents of Baſtard Children, Parents of poor Children enticing them from their Maſters; Beggars, Hedge-breakers, Robbers of Orchards, poor Children refuſing to be put Apprentices; Rogues whoſe Place of Birth and Settlement cannot be known; Servants running away, or being idle, or diſorderly, or who being out of Service, refuſe to go to Service after warned by two Juſtices; common Treſpaſſers, Vagabonds, &c. and any Perſon who lives extravagantly having no viſible Eſtate to ſupport himſelf, may be ſent to the Houſe of Correction, and ſet at Work there, but not be whipped, and may be continued there until he gives the Juſtices Satisfaction in reſpect to his Living. *Sid.* 281.

In caſe a Woman be delivered of a Child in the Houſe of Correction, the Child muſt be ſent to the Pariſh from which the Mother was ſent. 2 *Bulſt.* 358.

Rogues in the Houſe of Correction to have no more than they earn.

Rogues, Vagabonds, &c. may be ſent by one Juſtice to the Houſe of Correction, there to be kept to hard Labour with moderate Whipping, but ſhall not be chargeable to the County for any Allowance, either at their bringing in, or going out, or during their Abode there, but ſhall have ſo much Allowance as they ſhall deſerve by their own Labour. General privy Searches ſhall be made in every Town, &c. for Vagabonds, &c. twice every Year, or oftner, if Occaſion, by Warrant from Juſtices in their ſeveral Diviſions. Perſons ſo apprehended, to be carried before the Juſtices at their Meeting, &c. ſuch Perſons as aforeſaid to be conveyed

to the Houſe of Correction, at the Charge of the Hundred.

The Lord Chancellor may grant his Commiſſion to inquire of Monies collected for the Maintenance of Houſes of Correction, by 39 *Eliz. cap.* 4.

A Juſtice hath a diſcretionary Power to commit idle Perſons to the Houſe of Correction, but not to inflict a Puniſhment of Whipping till after Conviction. 1 *Sid.* 281. *Stile* 27.

The Juſtices in Seſſions may puniſh or remove the Governor, according to their Diſcretion, for his Diſregard of his Duty, *per* 39 *Eliz. c.* 4. and 7 *Jac.* 1. *cap.* 4.

Juſtices in corporate Towns have like Authority as Juſtices in the County.

Juſtices in Corporations have like Power as Juſtices in Counties.

Mittimus of an idle and diſorderly Perſon.

Eſſex, ſſ. *Forasmuch as it appeareth unto me, that* A. B. *of*, &c. *is an idle and diſorderly Perſon, and who will not employ himſelf, or be employed in any honeſt way to get a Livelihood: Theſe are therefore in His Majeſty's Name, to command you the ſaid Conſtable, that you do take the ſaid* A. B. *and him or her ſafely convey, or cauſe to be conveyed, to the aforeſaid Houſe of Correction, and there deliver him or her to the ſaid Keeper of the ſame, there to be puniſhed, and ſet on Work during the Space of*, &c. *delivering alſo to the Keeper this Precept: Commanding alſo you the ſaid Keeper to receive the ſaid* A. B. *into your Cuſtody, and him ſafely to keep until he ſhall be lawfully diſcharged, and in the mean Time to ſet him to Work, and to give him moderate Puniſhment, by whipping, allowing him alſo ſuch Maintenance as he ſhall deſerve by his Labour, and that you bring the ſaid* A. B. *to the next Quarter-Seſſions*, &c. *together with this Warrant: And hereof fail not*, &c.

39 El. c. 4. 7 Ja. 1. c. 4. Two Juſtices. Co. 2 Inſt. 730.

A Liberate from thence.

Eſſex, ſſ. *Whereas* A. B. *was by Warrant from us ſent to the ſaid Houſe of Correction, and is at preſent in your Cuſtody there: Now if the ſaid* A. B. *is in your Cuſtody for the Cauſe aforeſaid, and no other, We do hereby authorize and command you forthwith (on Receipt hereof) to ſet the ſaid* A. B. *at large from your Cuſtody; for which this ſhall be your ſufficient Warrant.* Given, &c.

Hue

Hue and Cry.

13 Ed. 1. 27 Eliz.

HUE and Cry is a Purſuit of any Perſon after a Felony committed, and flying for the ſame; and 'tis to be made from Town to Town, and from County to County, by Horſemen and Footmen.

Conſtable on Notice of Robbery is to raiſe Hue and Cry.

By the Common Law, where a Felony is committed, or any Perſon wounded, the Party grieved, or any other in his Behalf, may reſort to the Conſtable of the next Town, and acquaint him therewith, deſcribing the Party, and telling him the Way he is gone; who thereupon is to raiſe the Town, and to give the next Conſtable Notice, and he the next, and ſo on to the Sea-ſide.

By the Statute of *Winton*, 13 *Ed.* 1. the whole Hundred in which a Robbery is committed, is made liable to make good the Loſs, unleſs they apprehend one of the Robbers within forty Days, but by 27 *Eliz.* if one of the Robbers is taken, the Hundred is not liable.

And by 27 *Eliz. cap.* 13. Where Hue and Cry is made, the Inhabitants of any Hundred who ſhall neglect to purſue, muſt anſwer one Moiety of all ſuch Damages as ſhall be recovered againſt the other Hundred.

But this Stat. of *Ed.* 1. extends only to Robberies done to the Perſon, for it was made for the Safety of Travellers; and therefore if a Houſe ſhould be robbed in the Day-time, and the Felons eſcape, and Hue and Cry is made, and they are not taken, the Hundred ſhall not be anſwerable for the Reaſon above-mentioned. *Cro. Eliz.* 753. *Moor* 620.

The Perſon robbed ſhould give Notice as ſoon as he can, and he uſually goes to a Juſtice of Peace, and is examined on Oath.

Any one Juſtice may cauſe Hue and Cry to be raiſed when any Felony is committed, on Examination upon Oath of the Party robbed.

The Party robbed is not bound to lend his Horſe to purſue the Thief, nor is he bound himſelf to purſue him.

If there be no Hue and Cry, the Village is to be amerc'd. *Cro.* 179. *b.*

Every Hue and Cry muſt be made immediately after Notice, from Town to Town, from County to County, and by Horſemen and Footmen. 28 *Ed.* 3. *cap.* 11. 27 *Eliz. cap.* 13.

The Officer of the Town where Hue and Cry is levied, ought to ſend the ſame in Writing to every Town about, with a Deſcription of the Felon, &c. Marks of the Goods, &c. ſtolen, and not to the next Village only.

Officer on Hue and Cry ought to ſend Deſcription, &c. in Writing.

All Peace-Officers where Hue and Cry ſhall come, muſt ſearch all ſuſpected Places, and ſeize all ſuſpected Perſons, and carry them to ſome Juſtice to be examined.

All Perſons above fourteen Years of Age, are obliged to follow the Hue and Cry, or they are liable to be fined and impriſoned by the Juſtices of Gaol Delivery, and any Juſtice of Peace may bind them over by the Commiſſion.

Who are obliged to go with Hue and Cry.

The Streets of *London* and *Weſtminſter*, and other Cities, Towns, and Places, ſhall be deemed Highways as to Robberies.

No Town is bound to purſue any farther than to the next Conſtable; for ſuch a Purſuit is a good Excuſe for them, if the Town be indicted at the King's Suit, for the Eſcape of a Felon; otherwiſe they might be required to go on from one End of the Kingdom to the other, which would be unreaſonable and inconvenient. *Co.* 7. 7 *Dyer* 370.

How far a Town is obliged to go with Hue and Cry.

When the Hue and Cry is raiſed, every Inhabitant capable of aſſiſting therein ought to follow it, though he receives no Command or Notice thereof from any Officer, or any that hath Authority to demand his Aid in this Caſe.

And that without Command of Conſtable.

The Examination of a Perſon robbed, praying an Hue and Cry.

Eſſex, ſſ. THE Examination of *A.* B. of *C.* in the County of *E.* taken by *T. P.* Bar. one of the Juſtices of the ſaid County of *E.* on the firſt Day of *Auguſt*, *Anno Dom.* 1727. upon Oath.

13 Ed. 1. c. 1. 27 Eliz. c. 13.

This Examinant depoſeth and ſaith, That as he was riding on Monday *laſt the firſt Day of* June *laſt paſt, from the Town of* C. *in the County of* E. *to* M. *in the ſame County, he was aſſaulted on the common Highway leading from one of the ſaid Towns to the other, at, or near a Pla e there called* F. *about Two of the Clock in the Afternoon of the ſame Day, by two Horſemen, who there ſeized upon this Examinant, and carrying him out of the Road into a certain By-place adjoining, robbed him, and bound him: And this Examinant farther ſaith, That he is ſince informed that the*

13 Ed. 1. c. 1. 2 & 6. 28 Ed. 3. c. 11. Hob. 139.

Highway and By-place are both in the Parish of M. *aforesaid, and within the Hundred of* G. *in the said County; and he also farther deposeth, That the said Thieves did feloniously take from him, and rob him of* 20l. *in Money, one Gold Ring,* &c. *in all, to the Value of* 50l. *And this Examinant farther saith and deposeth, That he then did not, nor yet doth know the Parties that committed the said Robbery, or either of them.*

A Warrant for a Hue and Cry after a Felon.

13 Ed. 1. c. 1. 27 Eliz. c. 13.

Essex, ss. *Whereas I am credibly informed, that two Persons* (here describe their Age, Colour, Apparel, Horses, &c.) *did on the ninth Day of this Instant* June, *assault and take from* R. K. *of,* &c. *ten Pounds,* &c. *and that they are since fled for the same, and not yet apprehended: These are therefore to Command you forthwith to make diligent Search within your Precincts for the said Persons, and to make Hue and Cry after them from Town to Town, and from County to County, and that as well by Horsemen as Footmen, according to Law; and that if you shall find them, or either of them, that then you bring them before some one of His Majesty's Justices of the Peace for the County where he or they shall be taken, to be dealt withal according to Law: And hereof fail not,* &c.

N. B. Hue and Cry raised without Cause, is a Breach of the Peace; and if it be made falsly, and the Person enter into a House tho' with a Constable, and bind and rob the Master in the Night; 'tis Burglary.

Hundred.

Where the Hundred is liable.

BY the Stat. of *Winton*, 13 *Ed.* 1. *c.* 1. the whole Hundred in which a Robbery is committed, is liable to make good the Loss, unless one of the Robbers is apprehended. If it be done in the Division of two Hundreds, both Hundreds, and the Franchises within them.

What must be done in order to charge it.

In order to charge the Hundred, 'tis necessary, 1st. that the Person robbed with all convenient Speed give Notice of the Robbery, to the Persons inhabiting some House or Cottage next the Place where he was robbed.

2, He must be examined upon Oath, within Twenty Days next before he brings his Action, by one Justice

dwelling near the Hundred where the Robbery was done, whether he knew the Robbers or any of them; and if he did know any of them, then he must be bound by the Justices to prosecute them.

3. The Action must be brought after Forty Days, and within one Year after the Robbery committed.

By 27 *Eliz. c.* 13. the Hundred is not liable to make good the Loss, if any of the Offenders are taken. Where the Hundred is not liable.

Seizure of Goods in the Day, and the Robbery in the Night, is within the Statute to recover against the Hundred. 1 *Sid.* 263.

The Action against the Hundred must always be by Writ, and not by Bill. And 'tis not material in what Parish the Robbery is done, so 'tis done in the Hundred against which the Action is brought, but the Parish must be alledged in the Declaration. The Action must be by Writ, and not by Bill, and the Parish named.

If the Robbery is committed during Day-light, which is a convenient Time for People to travel, the Hundred is chargeable; nor is it material whether 'tis done before or after Sun rising or setting, so it be light. Robbery must be by Day-light.

If a Man is assaulted in one Hundred, and led into another, and there robbed, that Hundred where he is robbed is liable, because the Money was not out of his Possession in the Hundred where he was seized, *Goldſ.* 86. So if a Man is assaulted in one Hundred, and pursued to another, and there robbed. *Hutt.* 125. Hundred where Robbery is done liable.

But if a Pack Horse laden with Money is seized by Robbers in one Hundred and they lead him into another Hundred, and take away the Money there, the first Hundred is chargeable, because the first Seizing was a Robbery; but if the Owner himself had led the Horse into another Hundred, then that Hundred where the Money was actually taken, had been liable; because till then it was in his Possession.

If Goods are sent by a Carrier who is robbed, he must make Oath, and not the Owner. 1 *Leon.* 323.

A Servant delivered his Master's Money to a Quaker to carry home, they were both robbed, and the Servant made Oath, but the Quaker refused, and the Master brought the Action; and it was adjudged ill as to the Money of which the Quaker was robbed, but the Servant alone might have maintained the Action.

If the Servant be robbed, the Master, tho' absent may bring the Action. 1 *Cro.* 26. 2 *Rol Abridgm.* 686. But in this Case the Servant must make Oath, *&c.* and the Master may be a Witness at the Trial, to prove the Delivery of the Money or Goods to the Servant robbed, Master may sue.

Servant, though in his own Caſe. *N. B. C. J. Roll's contra.*

Carrier robbed liable to make Satisfaction.

Where a Carrier is robbed, he is liable to make Satisfaction in reſpect of the Reward he takes, and not becauſe the Hundred is anſwerable over to him; for a Carrier was liable at Common Law.

Juſtice liable to an Action.

A Juſtice of Peace is but a miniſterial Officer in this Caſe, and therefore if he refuſe to adminiſter the Oath, &c. he is liable to an Action at the Suit of the Party grieved. *Leon.* 323, 324. 1 *Cro.* 153.

The Hundred is chargeable, if the Robbery is committed in the Day-Time; and therefore if 'tis done in *January* after Sun ſetting, or if a Highwayman compel a Waggoner in the Day-Time to drive his Waggon out of the Way, and then robs him in the Night, this ſhall likewiſe be a Robbery in the Day; becauſe the firſt Seizure was a Robbery, and the Hundred in both Caſes ſhall anſwer it.

If Servant won't ſwear, Maſter without Remedy.

N. B. If the Servant or Carrier, &c. be robbed, either of them muſt make the Oath, &c. before the Juſtice, and not the Owners of the Goods; and if the Servant or Carrier refuſe ſo to do, the Owner hath no Remedy.

If the Party ſworn know any Thing of the Robbers, the Juſtice ought to bind him to proſecute by Indictment, or otherwiſe. 27 *Eliz. cap.* 13. *S.* 11.

The Method of levying the Money after Recovery.

After Recovery Execution of Damages may be levied on one Perſon, but then upon Complaint, &c. two Juſtices living in or near the Hundred (*Quorum unus*) may tax in Proportion the Towns, Villages, Pariſhes, Liberties and Hamlets of the ſaid Hundred, to make an equal Diſtribution to relieve the Perſons againſt whom the Execution was taken. 27 *Eliz. c.* 13.

A like Taxation for a Contribution of a Moiety out of a Hundred where any Default was in Purſuit, &c. to reimburſe the Hundred where the Robbery was done, and it ſhall be recovered in the Name of the Clerk of the Peace (without naming his Chriſtian or Sirname) where ſuch Robbery and Recovery was, and his Death or Removal ſhall not abate the Suit, and if it be recovered, &c. againſt one or few, &c. the ſame Courſe ſhall be taken as aforeſaid, towards the Relief of the Perſon charged.

After ſuch Taxation the Conſtables and Headboroughs of every Pariſh of the ſaid Hundred, ſhall aſſeſs the Inhabitants according to their Abilities to pay

the Sum taxed or laid by the Juſtices upon their reſpective Pariſhes.

Conſtables, upon Refuſal of any Inhabitant to pay the Aſſeſſment, may diſtrain and ſell, rendring the Overplus, and after it is levied, ſhall within ten Days deliver it to the Juſtices, or one of them, and the Juſtices muſt pay it to the proper Perſons.

A Robbery upon a Man in his Houſe, whether by Day or Night, ſhall not charge the Hundred. *Co.* 7. *Rep. f.* 6.

Hundred not anſwerable for Robberies in Houſes; nor if one of the Robbers is taken.

The Apprehending of one of the Robbers diſcharges the Hundred, tho' the reſt eſcape, but a Purſuit alone does not. 27 *Eliz. cap.* 13.

If the Party robbed apprehend any of the Thieves, this ſhall excuſe the Hundred. *Dalt. cap.* 57.

And if the Robbery be on the Lord's Day, the Hundred ſhall not be charged, but the Inhabitants ſhall make Purſuit according to 27 *Eliz. c.* 13. on Forfeiture of as much Money as was loſt. 29 *Car.* 2. *cap.* 7.

Nor for Robberies on the Lord's Day.

The Inhabitants of a Hundred wherein a Robbery was committed, having levied Hue and Cry, find one of the Robbers within Forty Days accidentally in the Preſence of a Juſtice of Peace, and charge him then with the Robbery: Adjudged that this was a Taking within the Statute, and ſhall excuſe the Hundred. *Paſch.* 27 *Car.* 2. 1 *Vent.* 118. 1 *Levinz* 4. *Raym.* 221. So if the Hue and Cry be made toward one Part of the County, and an Inhabitant of the Hundred apprehend one of the Robbers within another Part, this is a Taking within the Stat. *per Hale.*

One of the Robbers found by Accident, the Hundred is not anſwerable.

One Juſtice alone may examine Perſons robbed, whether they know thoſe who robbed them, and bind them to proſecute by Indictment. If they ſhall refuſe, they cannot bring their Action, and recover againſt the Hundred.

One Juſtice may examine a Perſon robbed.

If a Servant is robbed, the Juſtice ought to take the Oath of the Servant, and not of the Maſter. *Trin.* 31 *Eliz. Cro. Eliz.* 142. *Green's* Caſe. 1 *Leon.* 323. *Cro. Car.* 37, 336. *Bendl. Rep.* 155.

The Robbery muſt be committed on ſome Perſon, and upon the Road in the Highway, or in the open Fields, and not in an Houſe. *Trin.* 27 *Eliz. C. B. Cro. El.* 753. 3 *Leon.* 262. *Moor. Rep. pag.* 620. 848. *Co.* 2. *Inſt.* 569. and the Robbery muſt be in Day-light, and not in the Night, either in the Morning before it is Day-light, or in the Evening after it is dark. *Trin.* 28 *Eliz. Rot.* 725. 1 *Leon.* 57, and 218. 1 *And.* 158. *Goldſ.* 55. *Moor Rep.* 620. *Co. Lit.* 7. *f.* 6. *b. Milborn's*

Robbery muſt be on the Road, &c. and not in a Houſe.

Caſe. 4 *Leon.* 59. *Savil's Rep.* 83. *Cro. Eliz.* 270. *Mich.* 3 *Ja.* 1. *B. R. Cro. Ja.* 106. *Goldſ.* 70. *Style's* 233. *Mich.* 1 *W. & M. Shower's Rep.* 60. *Mich.* 22 *Car.* 2. *B. R.* 2 *Keeble* 713.

Juſtice may take the Oath of the Party robbed out of the County.

A Juſtice of Peace of the County, and who inhabits in the Hundred where the Robbery is committed, may take the Examination upon the Oath of the Party robbed according to Stat. 27 *Eliz. cap.* 13. when he is out of the County; becauſe the Oath is taken by the Juſtice of Peace, not by Virtue of his Office, but as a Perſon appointed by the Statute for this Purpoſe. But in other Caſes where a Juſtice of Peace doth a Thing by Virtue of his Office out of the County, the ſame is void; ſo it was adjudged. *Paſch.* 7 *Car.* 1 *Jones's Rep.* 239. *Cro. Car.* 211. *Helier* verſus *The Hundred of Benhurſt.*

It is not material in what Pariſh the Robbery is committed, but the Hundred muſt be certain. *Owen's Rep.* 7. *Bucknel's* Caſe. *Goldſ.* 58.

Conſtable is obliged to raiſe Hue and Cry.

C. was indicted, for that a Burglary was committed in the Night by Perſons unknown, and *J. S.* gave Notice of it to *C.* being then Conſtable, and required him to make Hue and Cry; which he refuſed; and all the Court held that he was indictable, notwithſtanding an Hundred ſhall not be charged, becauſe it is the Conſtable's Duty upon Notice given preſently to purſue. *Hil.* 41 *Eliz. Cro. Eliz.* 654. *Crouther's* Caſe.

A Man is ſlain in the Day-Time out of a Town, and the Murderer doth eſcape, the Hundred ſhall be charged therewith. *Dalt.* 403.

If no Hue and Cry raiſed, Village ſhall be amerced.

He which is robbed, ſhall not have his Action where one of the Felons is taken; but if there be no Hue and Cry, the Village ſhall be amerced, tho' one of the Felons be taken. *Cro.* 179. *b.*

Notice given to the Inhabitants of a Village near, tho' out of the Hundred, or County, is good. 1 *Cro.* 41. 379. 7 *Co.* 7, 8.

The Oath to be taken by a Perſon robbed, to ground an Action againſt an Hundred. *Auguſt* 9. 1727.

27 Eliz. c. 13. Hob. 140. This muſt be within 20 Days before the Action brought, or elſe it will not lye.

Eſſex. ſ. THE *Day and Year above-written* A. B. of C. *in the County of* D. *Gent. came before me* T. P. *Bar. one of his Majeſty's Juſtices of Peace in the ſaid County, and made Oath, that on* Monday *the One and Twentieth Day of* July *laſt, about three a Clock in the Afternoon, the ſaid* A. B. *coming from the Market-Town of* E. *where he dined that Day at the Sign of,* &c. *was, about*

two Miles off from the ſaid Town, met in the Highway at the End of a Lane there called, &c. *by two Horſmen, one of them being a Perſon about Thirty Years of Age*, &c. [*deſcribing them by their Perſons, Habits, Horſes*, &c.] *which ſaid two Horſemen ſet upon the Deponent, and robbed him, taking from him by Force the Sum of* 50 l. *one Diamond Ring, Value* 20 l. &c. *and the ſaid* A. B. *being examined whether he knoweth the ſaid Perſons, or any of them which robbed him, he depoſeth and ſaith that he doth not know them, or any of them.*

Jur' Die & Anno ſupradict' coram me *J. S.*

A Warrant to aſſeſs and levy Money recovered againſt an Hundred for a Robbery, and levied on two Men.

Eſſex, ſſ. *FOraſmuch as one* A. B. *was of late robbed of* 100 l. *in the Hundred of* E. *and hath a Judgment to recover the ſaid* 100 l. *againſt the ſame, the which hath been levied of and charged upon* J. D. *and* R. R. *two of the Inhabitants of* F. *within the ſaid Hundred of* E. *And upon their Complaint to us thereof, we have, according to the Act of Parliament in that Caſe provided for the Raiſing of the ſaid Money, ſet a Rate upon the Pariſhes and Places within the ſaid Hundred of* E. *which Rate is hereunto ſubſcribed and annexed: Theſe are therefore in his Majeſty's Name to require you the ſaid High Conſtable to give Notice thereof to the Petty Conſtables and Burſholders of your Hundred: And thereupon all the ſaid Petty Conſtables and Burſholders are required forthwith equally to diſtribute and ſet the ſame Rates upon the Inhabitants of their Pariſhes reſpectively, according to their Method of rating the Poor; and the ſame being rated, that they do demand it, and in Caſe of Non-payment, levy it by Diſtreſs and Sale of Goods upon every of the Inhabitants not paying reſpectively; and having levied and received the ſame, that they do forthwith bring and pay it in unto us, or one of us, to the End that the ſame may be paid to the ſaid* J. D. *and* R. R. *and that you do within ten Days next after the Date hereof, give to one of us an Account of the Execution of this Warrant. Hereof fail not at your Perils.* Given, &c.

Two Juſtices Quorum.
27 Eliz. c. 13.

The Form of the Rate above-mentioned.

A *Rate made by* A. B. *and* C. D. *Eſquires, two of his Majeſty's Juſtices of the Peace,* &c. *for the Raiſing of* 100 l. *upon the Hundred of* E. *charged upon it, and levied upon* J. D. *and* R. R. *two of the Inhabitants, upon a Judgment had by one* A. B. *againſt the ſaid Hundred after a Robbery.*

	l.	s.	d.
The Pariſh of *A.* —— —— ——	20	00	00
The Pariſh of *C.* —— —— ——	40	00	00
The Pariſh of *D* —— —— ——	40	00	00

All in the ſame Hundred of *E.*

Hunting. See Game.

Imbezilling, &c. See Manufactures.

Indictment.

Indictment what it is.

INdictment ſignifies in Law an Accuſation by an Inqueſt of twelve Men or more upon their Oaths, and in *Latin* is called *Indictamentum. Co. Lit.* 126. *b.*

A Preſentment what it is.

A Preſentment is a Declaration of the Jurors without any Bill offered before them; but an Indictment is grounded upon the Accuſation of a third Perſon, and is drawn and ingroſſed in Parchment in Form of Law, and delivered to the Grand Jury to be inquired of.

A Preſentment is properly that which the Jurors find and preſent to the Court, void of Form, but is after reduced to a formed Indictment. *Co.* 2 *Inſt.* 739.

Indictment muſt be drawn with Care.

Indictments muſt be drawn with Care both as to Matter and Form; to which End, in all Indictments of Felony or Treſpaſs it is good to ſay, againſt the Peace, or *Tantamount.*

But theſe Words with Force and Arms, *viz.* with Swords, &c. are not always neceſſary; yet it is good to uſe them; but in an Indictment of forcible Entry, they are needleſs, becauſe the word Force implies as much; but you muſt conclude *contra pacem.* 2 *Crook* 32. 3 *Crook* 186.

In

In an Indictment for Treaſon, Murder, Felony or Treſpaſs, the Words (with Force and Arms) are neceſſary; otherwiſe of Offences againſt the Peace only, as Conſpiracies, Slanders, Deceits, Eſcapes for Debt, &c. Where Words with Force and Arms are neceſſary.

In Indictments upon Statutes it is not needful nor ſafe to recite the Statute; for the Miſrecital in the Matter, Year, Day or Place, is fatal; but it is ſafe to conclude it thus, ſſ. againſt the Form of the Statute in ſuch Caſe made and provided, or of divers Statutes, &c. where there are divers Statutes that concern the Offence. 4 *Co.* 48. *Dyer* 363. 3 *Bulſtr.* 212. Not ſafe to recite the Statute at large, but only the Subſtance.

But tho' the Statute need not be recited, yet the Subſtance and material Words of it muſt be fully ſet down. *Plowd.* 79. *Co. Lit.* 98. *b.*

Indictments muſt contain Certainty, for they cannot be ſupplied by Intendment. 5 *Co.* 120. *Plowd* 48. 122. and therefore theſe Things are requiſite in them. Six Things required in all Indictments.

1. The Names and Sirnames both of the Parties indicted and offended, with the Addition of the Degree, Myſtery and Dwelling-place (both Town and County) of the Perſon indicted, if it be poſſible; but an Indictment againſt unknown Perſons, or taking the Goods of a Perſon unknown, &c. may be good. *Plowd.* 58. *b. Lamb.* 476, 478. *Dyer* 99. *Moore* 466. But *Miſnomer* ſhall not be made good by any *Alias dictus.*

2. The Time, ſſ. the Day and Year when the Offence was done.

3. The Place, ſſ. the Town and County where it was done, as at *C.* in the County of *S.*

4. The Name or Quality of the Things in which the Offence is done, ſſ. of dead Things, it may be Goods and Chattels, expreſſing them in Certainty; of living Things, Horſe, Ox, &c. but not by the Name of Goods and Chattels.

5. The Value or Price of the Thing is to be ſet down, that the Greatneſs or Smallneſs of the Crime may appear.

6. The Manner of the Fact, and Nature of the Offence, Felony, Treſpaſs, &c.

Indictments ought to be framed as near as may be to the Truth, though the Jury is not ſo ſtrictly tied to the Form of Indictments as to the Matter of Fact.

Falſe *Latin* ſhall not vitiate the Indictment, 5 *Co.* 121, as *Wiginti* for *Viginti*, &c. 10 *Co.* 133.

But

But Words of Art allowed by the *Sages* of the Law, though not by Grammarians, ought to be uſed; for all Sciences have their *Vocabula Artis.*

Words of Art falſly written will vitiate an Indictment.

Yet Words inſenſible, eſpecially Words of Art falſly written as *Murdredum* for *Murdrum*, *Burgariter* for *Burglariter*, *Feloniter* for *Felonice*, &c. (being not *Latin* Words, nor Words of Art) will make void an Indictment, except they be Surpluſage. 4 *Co.* 39, 42. and 10. 133. *Quære* if they be amendable.

An Indictment againſt four for ſeveral Offences, it ought to be *ſeparaliter. Palm.* 368.

One may be indicted for diſobeying an Order of Seſſions.

A wrong Addition, or no Addition of a Party indicted, is cured by his Appearance. 1 *Sid.* 247.

One indicted for drawing his Sword in *Weſtminſter-hall*, ſitting the Court. *Owen* 120.

An Indictment for ſtriking in the Church-yard. *Noy* 169.

Indictment naught, becauſe the Names of Things where not put in.

An Indictment naught, becauſe the Names of Things where no put in. *Noy* 41.

Indictment naught, becauſe no Place named till after the Alias dictus.

An Indictment naught, becauſe no Place is put until after the *Alias dictus. Noy* 32.

Indictment for ſtealing a certain Piece of Cloth *cujuſdam A. B.* and did not ſay *de bonis & catallis ejuſdem A. B.* this is naught.

1. The Name Sirname, and Addition of the Party indicted.

Indictment is good by another Name, if the Party is known by both; and if there is a wrong Addition or none at all; yet if the Party appear, that Fault is cured. *Sid.* 247. *Dyer* 46. *b.*

The Place of Abode is expreſly required by Statute of 1 *H.* 5. *c.* 5. and this Omiſſion is not helped by the Statute of Amendments, for 'tis excepted out of that very Act.

If there are two Vills in one Pariſh, the Offender muſt be named of ſuch a Vill *in parochia de S.* and not of the Pariſh generally.

2. The Year and Day.

Any Certainty, by which the Year and the Day may be known, is ſufficient.

An Offence committed before Midnight muſt be laid in the Indictment to be done the Day before, if after Midnight, then the Day after; and ſtriking one Day, and the Party dieth a Week following, the Day on which he dieth muſt be ſet forth.

If Fact be laid on a Day to come, or on ſeveral Days, Indictment void.

If the Fact be laid on a Day to come, or as done at ſeveral Times, the Indictment will be quaſhed. But 'tis not neceſſary to ſet down the very preciſe Day in which the Offence was done, ſo that 'tis before the Offence;

Offence; for the Jury ought to find the true Day, becauſe the Forfeiture relates to the Day found by the Verdict, and not the Day in the Indictment.

Neither is it neceſſary that the Jury ſhould find the Party guilty at that very Day laid in the Indictment; but to find the Fact as in Truth it is proved. *Keb.* 16.

In Caſes of Omiſſion, *viz.* for not doing what we ought to do, 'tis not neceſſary to ſet down the Day and the Year.

3. Place.

If the County is named in the Margin, 'tis well enough, but if no Town is named where the Fact was done, or any Place, and in Truth there is no ſuch to be found, the Indictment is void. 1 *H.* 5. *c.* 1. 18 *H.* 6. *c.* 12.

The Defendant was outlawed upon an Indictment for Murder, which was reverſed, becauſe it did not ſet forth any Place where the Murder was done, but only where the Aſſault was, and ſo this may be in one Place, and the Murder in another. *Dyer* 69.

The Word *Hereford* was in the Margin, and the Indictment was, that *A. B. de R.* in *Com. Glamorgan*, Gent. committed the Burglary at *H.* in *Com. præd.* and there being two Counties named before, it was uncertain; to which the Words *Com. præd.* ſhould refer; and therefore quaſhed. *Cro. Eliz.* 436.

Where the County muſt be named in the Body of the Indictment and where not.

But the County muſt always be named in the Body of the Indictment, in Caſes of Felony, but for any other Offence 'tis ſufficient in the Margin. *Cro. Eliz.* 606, 751. 1 *Bulſt.* 203. *Cro. Eliz.* 137.

If the Indictment be laid in the County where the Party died, altho' the Stroke were given in another County, yet the Indictment is good, by Stat. 2 & 3 *Ed.* 6. *c.* 24. and 'tis ſufficient to lay the Fact to be done in a Pariſh. 3 *Mod.* 158.

Stat. 35 H. 8. c. 2.

By Stat. 35 *H.* 8. *c.* 2. Treaſons, Felonies, Piracies, Robberies, Murders, &c. done on the Seas or beyond Sea, may be tried in any Place appointed for that Purpoſe, by the King's Commiſſion. *H. P. C.* 204.

Where a Robbery is committed in one County, and the Robber taken with the Goods in another County, he may be indicted for Felony in that other County; but for the Robbery, it muſt be in the County where the Robbery was committed.

4. Certainty of the Perſon.

If the Indictment is for taking away Goods of the Church, it muſt ſay, *bona Parochianorum in Cuſtodia Gardianorum Eccleſiæ de*, &c.

For Goods taken in the Life-Time of a Man who maketh an Executor, and dieth, it muſt be *de bonis Teſtatoris*,

ſtatoris, but if taken after his Death, then 'tis *Teſtatoris in cuſtodia Executorum.*

5. Names and Value of the Things taken away.

Where dead Things are ſtole, it is not enough to ſay *bona & catalla* generally, but *bona & catalla*, and then expreſſing the Names and Certainty thereof, is good.

When living Things are ſtole, the Indictment muſt name them, as *equum* or *oves*, &c. as the Caſe is, and muſt not ſay *bona & catalla.*

For Things *feræ naturæ*, as Hares, Partridges, &c. the Indictment is not good, unleſs they were taken in a Park or Warren, or encloſed Place, ſo as the Property was veſted.

Value.

If the Indictment is for living Things, or for ſuch as are ſold by Weight or Meaſure it muſt be ſaid *pretii*, &c. and yet an Indictment for taking Fiſhes in a Pond, was held good without ſetting forth the Number or Value, againſt the Opinion of *Twiſden.* 1 *Lev.* 203. becauſe 'tis the Value which makes it either Petty Larceny or Felony. And if the Indictment is in Treſpaſs, then 'tis to aggravate the Fault.

But of dead Things not ſold by Weight or Meaſure, it muſt be ſaid *ad valentiam.*

6. Nature of the Offence, and with what Weapon.

Indictment for that he is *Latro* or *Pacis Perturbator*, or that he is *mali Geſtus*, &c. Theſe are all too general, and therefore not good.

But *communis barrectator*, and concluding *contra formam Statuti*, is good, becauſe 'tis an Offence made by a Statute. 2 *Roll. Abr.* 79.

In eſcape for Felony, muſt ſet forth for what Felony.

For an Eſcape of a Perſon taken on Suſpicion of Felony, you muſt ſet forth what Felony. *H. P. C.* 206.

In Treaſon it muſt be *proditorie*, and conclude, *contra ligeantiæ ſuæ debitum*; in Murder *Murdravit*, which is *vocabulum artis*, and implies Malice; in Burglary *Burglariter*; in Rape it muſt be *Rapuit*; in Felony *Felonice*; for *cepit & furatus eſt* is not ſufficient. *Cro. Eliz.* 920. 4 *Rep.* 398. 2 *Cro.* 20. *contra.* 3 *Lev.* 396. 2 *Salk.* 630, 633.

Where it muſt be vi & armis.

But in all theſe Caſes, and in Treſpaſſes, the Indictment muſt be *vi & armis*, and it muſt conclude *contra pacem.*

If Muder be laid to be committed with a Sword, you may give in Evidence any Weapon of the like Nature.

It will lye for a Conſpiracy without ſetting forth that any Act was done. 1 *Lev.* 62.

Where the Criminal after Not guilty pleaded, may withdraw his plea.

In all theſe Caſes, if the Criminal pleads not guilty, and his plea is recorded, yet he may withdraw it, and confeſs the Indictment; and then the Entry is that *relicta verificatione cognovit Indictamentum.*

Tho'

Tho' a Criminal be acquitted upon an Indictment, yet if the Indictment was void for Inſufficiency, as in *Vaux*'s Caſe, 5 *Rep.* or if the Trial was in a wrong County, yet may the Criminal be tried over again for the ſame Offence. Where after Acquittal one may be indicted again for the ſame Offence.

But if the Indictment is good, tho' it ſuppoſeth the ſame Felony done in another Year, tho' by another Name, if known by both, or tho' the Proceſs was erroneous, yet will not another Indictment lye for the ſame Offence. Where not.

An Indictment is not void for falſe *Latin*, or for falſe or incongruous Words, as *wiginti* for *viginti*, nor for the Omiſſion of *Gladiis*, *Baculis* & *Cultellis*. 38 H. 8. *c.* 8. Not void.

It ſhall never be quaſh'd for falſe *Latin*, if by any Intendment it can be made good. *Cro. Eliz.* 108. Indictment quaſh'd.

And yet where two Men were Indicted for that *Felonice cepit*, this was held void. 5 *Co.* 121. *Cro. Eliz.* 754.

Contra formam Statuti, bad to omit where no Offence at Common Law. *Saund. Rep.* 1. 249. but not bad to omit where there is an Offence at Common Law. *Sid.* 409.

So it was quaſh'd for ſaying *ad generalem Seſſion' pacis*, leaving out *Domini Regis*. 1 Lev. 175.

So for inſenſible Words, as *Murdredum* for *Murdrum*, becauſe 'tis neither *Latin* nor a Word of Art.

So for leaving out *contra formam Statuti*, where the Offence is created by an Act of Parliament.

So it was quaſh'd for ſaying *Jurati* & *Onerati dicunt*, omitting (*ſuper Sacramentum ſuum.*) Sid. 140.

So for ſaying *quod per Sacram'* A. B. and the reſt of the Jury, omitting *proborum* & *legalium hominum*. 2 Cro. 635. Palm. 282.

Indictments for any heinous Offence, as Perjury, &c. and even for Nuſances, are never quaſh'd upon a Motion, but the Defendant muſt plead or demur to it.

And if there is one Indictment found by the Coroner's Inqueſt, and another by the Grand Jury, againſt a Man for the ſame Offence, he may be tried on both at the ſame Time; and this is the conſtant Practice.

For an Offence at Common Law, which is *contra pacem*, an Indictment will lye at Seſſions. So for Fraud or Deceit, as for ſelling deceitful Goods, or by falſe Weights and Meaſures. And tho' there are particular Statutes relating to this Matter, yet that doth not alter the Caſe, for the Difference is this, That where an Offence at Common Law is made ſo likewiſe by Difference between Indictments for Offences at Common Law, and thoſe on Statutes.

by any Statute, and a Puniſhment appointed by that Statute, yet the Offender is indictable, as it is an Offence at Common Law. But where a Statute creates a new Offence, and inflicts a Puniſhment, that muſt be purſued, and no other.

But 'tis not ſafe to recite the Statute *verbatim*, or the Beginning, Continuance, or End thereof, becauſe any Miſ-recital will make the Indictment void; but the Subſtance thereof and the Offence muſt be ſet forth; for the Concluding *contra formam Statuti*, will not help, becauſe theſe Words relate only to Circumſtances, and not to any Subſtance. *Dyer* 3, 12, 363.

So that when an Indictment for Uſury in taking more than 6 *l. per Cent.* for the Loan of 100 *l.* and concludes *contra formam Statuti*; tho' it appeared plainly to be corrupt, yet becauſe it was not expreſly ſet forth that it was by corrupt Lending, the Indictment was quaſh'd. 11 *Rep.* 58.

Where Defendant muſt appear in Perſon.

The Defendant muſt appear and put in Bail in Perſon, upon a Writ of Error brought upon an Indictment, and therefore Sir *William Read*, who was 90 Years old, was brought in a Litter to *Weſtminſter-Hall*, and upon Mens Shoulders to the Bar, to aſſign Errors. 2 *Cro.* 6. 62.

Within what Time Indictments muſt be brought upon a Penal Statute.

Indictment upon a penal Statute where the King is to have the Forfeiture, muſt be brought within two Years after the Offence. But where a common Perſon is to have it, then within a Year, except it be otherwiſe directed by the Statute; by Star. 31 *Eliz. c.* 5. 33 *H.* 8. And therefore one was indicted for not Baptizing his Child, and it appeared the Offence was three Years before; and the Court ſtayed the Indictment. *Mich.* 7 *Jac.* 1. *Stoner's* Caſe. 13 *Eliz.* 5. 39 *Eliz.* 1. 2 *Jac.* 4.

Weſton was indicted for giving Sir *Thomas Overbury* ſeveral Poiſons at ſeveral Days, whereof ſuch a Day he died, and ſays not of which, yet good.

One wounds a Man in *March*, and he dieth thereof on the 15th of *April*, if the Indictment concludes that he killed him in *March*, 'tis not good, but it muſt be that he killed him on the 15th of *April*, but the beſt way is to conclude generally, and ſay he kill'd him, without naming the Day. *Dyer* 50. *b. Co.* 4. *Rep.* 41. *a.* 44. *b.* 47. *a.* 3 *Cro.* 739.

Indictment for impriſoning one without a Warrant is ill; it ſhould have been *ſans* reaſonable Cauſe, for without Warrant one may, without reaſonable Cauſe one may not be apprehended. *2dly*, It ſays he ſhew'd him

him not the Cauſe, &c. and that he was not bound to do. 3*dly*, It ſays not that he was falſly apprehended; *Ideo Caſſetur.* Stile 29, 30.

Indictments which are at the Suit of the King, the Court will force the Defendant to carry it down to be tried by *Niſi Prius*, at his own Charge; but not Informations, which are at the Suit of the Party.

Indictment at the Suit of the King, the Court will force Defendant to carry it down to be tried at his own Charge.

All Indictments for Treaſon muſt be taken in *propr' Com'*, but when they are taken there they may be removed and tried in another County, but by a Jury of the proper County. 1 *And* 201. *pl.* 154.

Indictment for that he ſaid of the Juſtices of Peace in *Com' Som'*, that they underſtood not the Statute of Exciſe no more than a Bee le; and that the Parliament that made it, underſtood it not, quaſh'd, becauſe it is not indictable, but the Juſtices might have bound him to his Good Behaviour for ſuch Words, &c. *P.* 13 *Car.* 1. B. R.

An Indictment may be brought at any Time for an Offence done againſt the Common Law, but for any Offence againſt the Statute it muſt be brought within the Time preſcribed by the Statute.

A ſcandalous Letter indictable before the Seſſions. *Blac.* 167.

For an Eſcape on Suſpicion of Felony, you muſt ſet out the Felony. *H. P. C.* 206.

If one commit a Burglary or Robbery in one County, and be taken with the Goods and arraigned in another County, if it ſo appear upon Evidence at his Trial, he ſhall not have the Benefit of Clergy, by *Stat.* 25 *H.* 8. *c.* 3. *Stat.* 5 *Ed.* 6. *c.* 10. but upon ſuch Trial the Evidence muſt be entred upon Record.

In Indictment for Murder, *Murdravit*, without ſaying *ex Malitia præcogitata*, is not good. So for Felony it muſt ſay, he took and led, or carried away.

The inſerting of the Words *vi & armis* where they are needleſs, nor a falſe Concluſion, will not hurt an Indictment. 4 *Co.* 41. And if an Indictment have theſe Words in the Beginning, (Felonioufly and of Malice forethought,) to the Affray, and after omit it to the Stroke, yet it is good. *Ibid.* If it be for ſtealing a Horſe, his Colour muſt be mentioned.

Nota; Percuſſit neceſſary in all killings but by Poiſon.

If it be the Goods of a Parſon, it muſt be the Goods of the Rector, not of the Church. 37 *H.* 6. 33. The Goods of a Corporation, they muſt be ſaid to be Goods of them, by the Name of their Corporation.

The

The Inhabitants of a Parish may be indicted either by their Names in particular, or in general without naming any one of them in particular; and the Indictment is good either way. 8 *Rep. Cook* and *Warburton.* 2 *Roll. Abr.* 79.

If a Man go by two Names, he may be indicted by either of them.

Where Criminals must be tried in the County where the Party died.

When several Acts which are done at several Times do make up the Offence, as the Stroke and the Death, both Times must be certainly expressed, *Dyer* 69. And where Part of the Offence is done in one County, and Part in another County; as *A.* struck *B.* at *C.* in the County of *N.* and *B.* afterwards died of that Stroke in the County of *L.* in this Case *A.* must be tried in the County where the Party died.

When Indictments have been quash'd.

An Indictment for Murder was quash'd, for that it said with a Sword he struck, and omitting, (which he held in his Hand;) also for that it omitted, (that Feloniously he made an Assault upon him, *&c.*) Also for that it did not shew, after the *dans ei, &c.* that Part of the Body that was wounded; also for that he said struck, and omitted (then and there:) *Percussit* to express a Stroke is a material Word. *Long*'s Case, 5 *Co.*

If an Indictment be for a Wound, and it be laid to be under his left Arm, or under his Pap, or about his Navel, these are void for Incertainty; but under his Arm, about his Pap, or in the left Part of his Body, or in the left Part of his Belly about his Navel, these are good and certain enough. *Co.* 4. 41. 9. 114. 9 *Jac.* 1. And if there be two Wounds alledg'd, and one of them is more uncertainly set down, this will mar the whole Indictment, if it say, of the Wounds aforesaid he died. *Co.* 4. 41. 5. 120. 9. 62, 114.

In Indictment for taking an Half-penny from another in the Highway, and (he made an Assault) was omitted; therefore the Court resolved it a good Indictment for Felony, but not for Robbery; and therefore he had his Clergy. *Dyer* 224. *Hill.* 27. *Jac.* 1. *B. R.*

To indict a Man for Battery and Wounding, and not say with what Weapon, nor in what Part of the Body he is wounded, is naught.

If there be two Degrees of an Offence, as making and publishing, and the Indictment speak of but one, it is naught. 6 *H.* 7. 12.

If a Man be indicted for an Offence at the Common Law, which is none, this is void, and the Party must be discharged; for if it be an Offence made upon a Statute, he must then be indicted upon the Statute. But if these Words (against the Form of the Statute) be left out in an Indictment for an Offence made so by a Statute, the Indictment is erroneous; for the Offence is not punishable but by the Statute.

Where the Indictment is erroneous.

If a Man will avoid an Indictment for any formal Fault in the Addition, it must be done before the Party indicted hath pleaded to the Indictment; for by it he taketh on him to be the same Person, 8 *Ed.* 4. *c.* 15. 35 *H.* 6. *c.* 12. yet Outlawries thereupon may be reversed for this Defect at any Time; but of other Errors the Party may take Advantage, at any Time before Judgment, to quash, or after Judgment, to reverse it. As, if the first Indictment be in a wrong County, or the first charge him as Principal, the second as Accessary after the Fact.

When one wou'd avoid an Indictment for any formal Fault in the Addition.

Conviction in an Appeal is a good Bar to an Indictment for the same Felony. 4 *Co. Vaux*'s Case. One *Darley* was found guilty of Manslaughter, but not guilty of Murder, upon an Appeal; and afterwards was indicted for Murder at the King's Suit, and he pleaded the first Conviction, and it was a good Bar. 4 *Co.* 40.

Conviction in an Appeal, good Bar to an Indictment.

Auterfoits convict of Manslaughter, and Clergy allowed, is a good Bar in an Appeal of Murder. *Ibid.*

Clergy a good Bar in an Appeal.

But Judgment in Trespass *pro bonis asportatis*, is no Bar in Appeal of Robbery, because it is of a more high Nature. *Ibid.*

If the Indictment be about a Thing whereof the Justices of the Peace have no Cognizance, as which belongs to the Justices of the Forest, or the like, the Party indicted may plead it to the Jurisdiction of the Court, and avoid the Indictment. 21 *H.* 7. 21.

N. B. *Abduxit* is used in Indictments for Horse-stealing.

Effugavit, for stealing Oxen, Sheep, and other Cattle.

Asportavit, for dead Goods; as Household-Goods, *&c.*

No Indictments can be taken, nor Enquiry made, but before two Justices, one to be of the *Quorum*. *Lamb.* 48.

Error only, and not Exceptions, can discharge an Indictment after Judgment given. *Blac.* 293.

Proceſs on Indictments.

After an Indictment is found by the Jury for any Treſpaſs upon a penal Statute, if the Defendant doth not appear the next Seſſions, a *Venire Facias* may be awarded in the Name of the King, directed to the Sheriff, and *Teſte* by the Juſtice; the Form whereof is thus:

Venire Facias.

Eſſex, ſſ. GEorgius Dei Gratia, &c. Vic' Eſſex' ſalutem Præcipimus tibi quod non omittas propter aliquam libertatem in balliva tua quin venire facias J. O. de H. in Com' tuo Labourer, coram J. P. Baronetto & G. G. Armigero duobus Juſticiariis noſtris ad pacem in Com' præd' conſervand' necnon ad diverſas felonias tranſgreſſiones & alia malefacta in dicto comitatu perpetrat' audiend' & terminand' aſſign' apud S. in Com' tuo * 30 die Julii proximo futur' ad reſpondend' nobis ſuper quibuſdam articulis ſuper ipſum J. O. præſentat' & habeas ibi tunc hoc præceptum Teſte J. P. Baronet, apud S. 15 die Junii, &c.

* The Day of the Seſſion.

If the Sheriff return the Defendant ſummoned, and he doth not appear at the Return of the *Venire Facias*, then you take out a *Diſtringas* againſt him, as follows.

Eſſex, ſſ. GEorgius Dei Gratia, &c. Vic' Eſſex' ſalut' Præcipimus tibi quod non omittas propter aliquam libertatem in balliva tua quin in eam ingrediaris & diſtringas J. O. de H. in Com' tuo Yeoman per omnia terras & tenementa ſua & quod de exitibus eorum reſpondeas, &c. ita quod habeas corpus ejus coram cuſtod' pacis noſtre, &c. * ad reſpond' &c. Teſte, &c.

* ut prius.

And ſo a Diſtreſs infinite till Appearance.

But if the Sheriff return *nihil habet*, then you muſt ſue forth a *Capias* againſt the Defendant. The Form whereof is.

Eſſex,

Eſſex, ſſ. GEorgius &c. Vic' Eſſex' ſalutem Præcipimus tibi quod non omittas propter aliquam libertatem in balliva tua quin in eam ingrediaris & capias J. O. de H. in Com' tuo Yeoman ſi invent' fuerit in balliva tua & eum ſalvo cuſtodias ita quod habeas corpus ejus coram Juſticiariis noſtris ad diverſas felonias tranſgreſſiones & alia malefacta in eodem Com' tuo perpetrat' audiend' & terminand' aſſign' apud L. in Com' tuo die Jovis † nono die Julii proxim' futur' ad reſpond' nobis de diverſis tranſgreſſionibus contempt' & delictis de quibus indictatus exiſtit & habeas ibi tunc hoc breve Teſte J. P. & G. G. apud L. &c.

† The Day of Seſſions.

If the Sheriff return *non eſt inventus, &c.* then you take out an *Alias* and *Pluries*, and then an *Exigent*, which runs in the Form following.

Eſſex, ſſ. GEorgius &c. Vic' Eſſex' ſalutem Præcipimus tibi quod exigi facias J. O. de H. in Com' tuo Yeoman quouſque ſecundum legem & conſuetudinem Regni noſtri Anglie utlagetur, ſi non comparuerit & ſi compareuerit tunc eum capias & ſalvo cuſtod' ita quod habeas corpus ejus coram Juſticiariis pacis noſtre necnon ad diverſas felonias tranſgreſſion' & al' malefacta in eodem Com' tuo perpetrat' audiend' & terminand' aſſign' ad general' ſeſſion' pacis Com' tui proxim' poſt feſtum Sancti Thome Martyris proxim' futur' tenend' ubicunque in eodem Com' teneri contigerit ad reſpondend' nobis de diverſis tranſgreſſionibus contempt' & offens' de quibus ipſe indictatus eſt & habeas ibi tunc hoc breve Teſte A. B. apud L. primo die Maii Anno Regni noſtri primo.

The Return thereof.

AD quem diem R. F. Mil' Vic' Com' pred' retorn' quod ad Com' ſuum tent' apud L. 4 die Julii Anno Regni &c. nunc infraſcript' A. B. primo & ſic ad quatuor alios Com' tunc proxim' ſequen' ibidem tent' pred' A. B. quint' exact' fuit & non comperuit, ideo utlagatus fuit.

This Outlawry muſt be certified into the King's Bench, becauſe the Juſtices of Peace cannot award a *Capias Utlagatum*.

But the Justices out of Sessions may award a *Supersedeas* to stay any of the Proceedings aforesaid, before the Outlawry is certified. The Form of which is,

Essex, ss. GEorg' &c. Vic' Esser' salutem Quia J. O. de H. venit coram Justiciarus nostris ad diversas felonias transgressiones & alia malefacta in Com' tuo perpetrat' audiend' & terminand' assign' apud L. die Mercurii &c. & invenit sufficien' securitatem pro comparentia sua ad proximam general' sessionem pacis Com' E. pred' ideo tibi precipimus quod prefat' J. O. de ulterius exigend' & utlagand' capiend' seu in aliquo modo molestand' occasione quorundam transgression' contempt' & al' offens' unde indictatus est omnino supersedeas & qualiter hoc preceptum nostrum fuerit execut' constare facias quatuor Justiciariis pd' apud L. pred' die Mercurii, &c. & habeas ibi tunc hoc breve Teste T. P. & G. G. Ar. &c.

All Indictments may be traversed; that is, you may deny and take Issue upon the chief Point in the Indictment. And this Traverse is to be tried by a Jury at the General Quarter-Sessions, except in Riots and forcible Entries.

By the Statute of 10 & 11 *W.* 3. *c.* 3. the Clerk of the Peace shall have no more than 2*s.* for drawing an Indictment upon Pain to forfeit 5*l.* to the Party grieved; if he draw it defective, shall make a new one without Fee, under the same Penalty.

Ingrossers. See Forestallers.
Infant. See Feme Covert and Recognizance.

Information.

Information what it is.

AN Information is the Accusation of a Stranger before the Justices of Peace for the King, or for his own Benefit, against the Party offending, to the Intent to put the Party to Answer.

An Informer is such as informs against, or prosecutes in any of the King's Courts of Common Law, Assizes, or Sessions, those who offend against any Law or Penal Statute; and no Man may be an Informer who is disabled by any Misdemeanor. Stat. 31 *Eliz. c.* 5.

Two Sorts of Informers.

There are two Sorts of Informers, the one Voluntary, the other Necessary. The first are the common

Informers, the laſt are the Attorney General, and the Clerk of the Crown in the King's Bench; and theſe are Honorary.

By Stat. 4 and 5 *W. & M. c.* 18. A Recognizance is to be taken of the Informer, by one Juſtice reſiding in the Place where the Cauſe of Information doth ariſe, in the Penalty of 20*l.* to proſecute with Effect, and abide ſuch Order as the Court ſhall direct.

And in order to have an Information filed, and Proceſs iſſued for Treſpaſſes, Batteries, or other Miſdemeanors, this Recognizance muſt be delivered to the Maſter of the Crown-Office; whereupon Proceſs will iſſue forth without Motion in Court. And there muſt be an Entry made in the Office, and a *Memorandum* thereof filed in ſome publick Place, that every Perſon may ſee the Recognizance without Fee.

How every Informer is to exhibit his Information.

Every Informer ſhall exhibit his Information in *propria perſona*, or by Attorney; and muſt do it within one Year after the Offence; and the Proſecution muſt be within one Year after the Information exhibited, unleſs it be where the King hath any Part, in which Caſe Proſecution may be commenc'd for that Part, within two Years after the Information made, by 31 *Eliz. c.* 3.

Informer not to agree with the Offender, nor delay, nor diſcontinue his Suit.

The Informer ſhall not afterwards agree with the Offender without Leave of the Court; if he doth, he ſhall ſtand in the Pillory two Hours, and forfeit 10*l.* to the King and Party grieved. And if he delay or diſcontinue his Suit, or be nonſuited; or in Caſe the Verdict paſs for the Defendant, the Informer ſhall pay Coſts. And theſe Matters are inquirable by the Juſtices in their Seſſions, *per Stat.* 18 *Eliz. c.* 5. Though the Seſſions cannot try an Information, unleſs they have Power by ſome Statute; but they are to proceed upon Indictments. *Jones's Rep.* 3. 133. *Cro. Car. Farrington's* Caſe, and *Green's* Caſe. 112, 146.

A Note muſt be made of the Day of exhibiting Information.

A Note muſt be made of the Day, Month, and Year of exhibiting the Information; and from that Time 'tis to be accounted a Record; and the Name of the Proſecutor, and upon what Statute the Proſecution is made, is to be indorſed by the Clerk, or he ſhall forfeit 40*s.*

In Informations on Penal Statutes, it is ſafeſt to conclude *contra formam Statuti in hujuſmodi caſu edit' & provis'* generally, and not to recite the Statute, and conclude *contra formam Statuti pred'*; for a ſmall Miſrecital may make the whole Information void. *Raym.* 192.

This Statute doth extend to common Informers, and not to the Party grieved. Noy 71.

An Informer must not lay the Offence in any other County but where it was really done, except in Champerty, Concealing Customs, Extortion, Foreſtalling, Ingroſſing, &c. where the Penalty exceeds 20 *l.* which may be laid in any County, *per Stat.* 31 *Eliz. c.* 5. But the Party grieved may bring his Information in any County; for the Statute of 31 *Eliz. c.* 5. extends not to him. *Cr. Eliz.* 645. *Allen's* Caſe. And by Stat. 21 *Jac.* 1. *c.* 4. every Informer is to make Oath that the Offence (except in the Caſes aforeſaid) was done in the County where the Information was exhibited, and committed within one Year before the Information commenced; and if it cannot be proved to be done in the County, the Defendant ſhall be acquitted. This Act has been held to reſtrain Informations in the Courts at *Weſtminſter*, unleſs allowed by ſubſequent Act of Parliament; but an Action of Debt may be brought in *B. R.* on a Penal Statute. *H.* 10 *W.* 3. *B. R.*

Where the Suit is given to the King's Courts of Record, or to any Court of Record, it is intended the Courts at *Weſtminſter*. *Jones's Rep.* 193.

If two Informations are exhibited againſt the ſame Perſon at once.

If two Informations are exhibited againſt one Perſon for one and the ſame Offence, and in one Court at the ſame Time, they ſhall be both void, becauſe here is no Priority of Time to fix the Right more in one Informer than the other. And if the Defendant pleads a Difference of Time; as that one Information was exhibited ſuch a Day in the Term; and that before that Time, (*viz.*) on ſuch a Day in the ſame Term another Information was exhibited, and Judgment obtained, &c. This is a good Plea in Bar. *Hob.* 128. *Py ver. Coke. Stile* 417. 3 *Cro.* 201, 326.

Who is a common Informer.

N. B. Where a Statute gives a Penalty to a Stranger, and he ſues for it, he is a common Informer, and ſhall pay Coſts upon the 18 *Eliz. c.* 3. but where the Penalty is given to the Party grieved, he is not a common Informer, nor liable to Coſts.

Where the Court is to award Coſts to the Defendant.

If the Defendant appear and plead; and if the Informer doth not within a Year after Iſſue joined, procure a Trial; or if the Defendant hath a Verdict, or the Informer procure a *Non Proſ.* the Court ſhall award Coſts to the Defendant unleſs the Judge doth certify on Record, that there was Cauſe for the Information. And if the Coſts are not paid within three Months after they are taxed, then the Defendant ſhall have the Benefit of his Recognizance.

If

If the Informer die, releaſe, or is nonſuit, the Attorney General may proceed; and if a *Non Prof.* be obtained, the Informer may go on. 3 *Inſt.* 194. 3 *Cro.* 138. *Co.* 11. *Rep.* 65. *b.* *Co. Inſt.* 141. 5 *Rep.* 48. 11 *Rep.* 65. 3 *Rep.* 138, 583.

Penal Laws are *ſtricti juris*, and therefore the Statutes of *Feoſails* do not extend to them.

Where any Part of the Forfeiture upon a Penal Law is given to the Informer, he muſt ſet it forth and demand it in the Information, or 'tis void. *Hob.* 345.

The *Venire* was *præceptum eſt*, and the Judgment *conſideratum eſt*, and left out; *per curiam*, 'tis not good. 1 *Lev.* 123.

Stat. 18 *Eliz. c.* 3. is made perpetual by Stat. of 27 *Eliz. c.* 10.

If the Defendant plead in Bar a prior Information, this is a good Plea. *Hob.* 128. 2 *Lev.* 141.

That there is an Indictment for the ſame Matter is a good Bar to an Information for it. *Mich.* 9 *G.* 1.

By Stat. 31 *Eliz. c.* 5. all Suits for uſing unlawful Games, or for uſing a Trade without having been an Apprentice, ſhall be determined only in the Seſſions or Aſſizes of the County. *Hob.* 183. *Daviſon* verſus *Barber.* What Suits are to be determined in their proper County.

If the Defendant in a popular Action plead a Recovery in Bar, the Plaintiff may aver that it was by Covin; and if it be found, the Plaintiff ſhall have Judgment, and the Defendant be impriſoned for two Years, and a Releaſe of the Party ſhall not avail him. 4 *H.* 7. *c.* 20.

The Defendant to any Information may plead the general Iſſue, and give the ſpecial Matter in Evidence. 21 *Jac.* 1. *c.* 4.

An Information againſt one for forging an Entry in a Pariſh-Book of Marriages, and the Party fined. 2 *Syd.* 71.

No Informer ſhall agree with the Offender before Plea pleaded nor after, without Leave from the Court, by Stat. 19 *Eliz. c.* 5.

Information, and demands the Moiety of the Forfeiture where but the third Part is given to the Informer, is inſufficient; for it has not only the Nature of an Indictment to lay down the Offence, but an Action to demand what is due to him. 1 *Cro.* 241. 2 *Cro.* 300. but 2 *Cro.* 530. cont. *Hob.* 245. *Py* ver. *Weſtly.* Information muſt not claim more than is given to the Informer.

Where Part of the Money received belongs to the King, the Party ſued Execution of all to himſelf, the Execution ordered to be ſtayed, and a new one Where Execution ordered to be ſtayed.

awarded; and in the mean Time the Money to be brought into Court. *Stil.* 318, 319.

Where an Action or Information is *tam pro Domino Rege quam pro parte*, there if the Judgment be entered only for the Party, 'tis erroneous. Dr. *Trigg* ver. *Col. of Phyſicians. Stile* 329, 330, 18.

Information for uſing the Trade of a *Draper* ill, not ſaying it was a Trade at the Time of the Statute 5 *Eliz. c.* 4. made, nor ſaying *contra pacem. Rex* ver. *Grove.* 16 *Car.* 2. *B. R.*

In an Information for detaining the King's Goods, 'tis ſufficient to ſay, that they were in his Poſſeſſion without ſhewing how they came, as in Detinue by a common Perſon, it muſt be. 35 *H.* 6.

Where there can be no Judgment.

Information for Uſury againſt two, and one found guilty, the other is not; no Judgment. *Rex* ver. *Page. Lane* 59, 60, 198.

Information that *diverſis diebus & vicibus inter* ſuch a Day and ſuch a Day, ſhe did ſuch Offences, good, tho' in a criminal Caſe. *Rex* ver. *Lady Broughton. M.* 24 *Car.* 2. *B. R.*

Contra formam Stat. how to be urged in it. *Raym.* 192.

Depoſition of an Informer, that the Offence was committed in the County.

21 Jac. 1. c. 4.

A. B. *of*, &c. *maketh Oath that* C. D. *of*, &c. *did commit*, &c. (here ſet forth the Offence) *in the County of*, &c. *where this Deponent hath exhibited his Information againſt the ſaid* C. D. *for the ſame; and that the ſaid Offence was committed by the ſaid* C. D. *within the Space of one Year before the Commencing of the ſaid Information.*

Condition of a Recognizance taken of the Informer, to proſecute, &c.

THE *Condition of this Recognizance is ſuch, that if the above-bound* A. B. *who hath lately informed againſt* C. D. *for committing*, &c. (here ſet forth the Crime) *do perſonally appear before his Majeſty's Juſtices of the Peace, at their next general Quarter-Seſſions of the Peace to be held for the County of*, &c. *and do then and there proſecute the ſaid* C. D. *for the Offence aforeſaid, according to Law; and give ſuch Evidence and Information relating to the ſame,*

as

as he knoweth, and do not depart from thence without Leave of the Court, but abide ſuch Order as the ſaid Court ſhall direct; then, &c. *or elſe,* &c.

Inmates. See Cottages.

Innkeepers.

ANY one may erect an Inn for Lodging of Travellers without any Allowance or Licenſe; for it is not a Franchiſe, as was reſolved in Parliament, and by all the Judges. 20 *Jac.* 1. *Roll's Rep.* 2d. Part 84. *Hutton's Rep. p.* 99.

But if any Inn uſeth the Trade of an Ale-houſe, it ſhall be within the Statute of Ale-houſes; by *Yelverton. Paſ.* 9 *Jac.* 1. *Bulſ. Rep.* 1. *p.* 109.

Caſes of Robberies in Inns.

One comes to an Inn, and the Innkeeper ſays to him, Here are Perſons reſort to my Houſe, I do not know them, nor what their Behaviour is, and therefore take the Key of ſuch a Chamber and put your Things there at your own Peril, for I will not take any Charge of them; and they are afterwards ſtolen, the Innkeeper ſhall anſwer for them; for an Innkeeper is by the Law chargeable for all Things that come to his Inn; and he cannot diſcharge himſelf by ſuch Words, *Moore's Rep. p.* 78. *Plow.* 207. but if he refuſes him, and ſays his Houſe is full, and yet he will ſtay, *&c.* 'tis otherwiſe. *Hill.* 4 & 5 *P. & M. Bendloe's Rep. p.* 18. *Bird* ver *Bird. Dyer* 158. *b. Paſ.* 26 *Eliz. B. R. Co. Lit.* 8. 32. *Caly's* Caſe.

If a Man hires a Chamber in an Inn for ſome Time, there the Innkeeper ſhall not be chargeable with any Robbery committed in that Time. But if one leaves Goods in an Inn, and goes about his Buſineſs, and returns the ſame Day, and his Goods are ſtolen, the Innkeeper ſhall anſwer for the Robber of the Goods. *Paſ.* 7 *Jac.* 1. *Moore's Rep.* 876. *Walbrook* ver. *Griffith.* 2 *Brownlow. Rep.* 254. *Latch's Rep.* 88. 126. *Gulielm's* Caſe. *Drope* ver. *Thaine. Trin.* 2 *Car.* 1 *Bendloe's Rep.* 173. *Mic.* 5 *Jac.* 1. 2 *Cro.* 188. *Gilley* ver. *Clark. Noy* 126.

If an Innkeeper refuſes to lodge a Gueſt, he may have an Action *ſuper caſum* againſt him; but if he will lodge there, his Houſe being full, and ſays he will make ſhift as well as he can, if he loſe his Goods, Hoſt ſhall not anſwer for them; but on Iſſue that he was not robbed

bed in Default of him or his Servants, may give that in Evidence, that he lodged againſt his Will. *And. Pl.* 69.

Action againſt an Innkeeper for Goods loſt; he pleads that he gave them Notice to lock them up in a Room, and then he would anſwer for them, elſe not; notwithſtanding which the Plaintiff left them at large where they were loſt; and adjudged a good Plea. *Dyer* 266. *Co. Rep.* 33.

An Innkeeper maintains a Horſe for his Meat; and if no ſpecial Agreement were made what to pay, when he eats off his Head, he may ſell him, becauſe a Charge to keep him; but where a ſpecial Agreement is for ſo much a Day, he cannot, becauſe he has reſted upon the Agreement. So a Taylor may detain a Garment for Non-Payment, not ſell it. For the Caſe of Hoſtlers, *Vide* 1 *Co.* 207. The Cuſtom of *London* is, that Innkeepers may ſell an Horſe for his Meat, but not for the Meat of other Horſes.

Caſes of Robberies in Inns.

An Innkeeper bid his Gueſt draw the Wain-load of Wool into an inner Court, or elſe he would not anſwer for it; he did not, and ſome was loſt, and the Innkeeper was diſcharged. *Moor Pl.* 299.

As to Loſs of Goods, there muſt be Defect in the Innkeeper or his Servants; and therefore if the Gueſt's Servant, or one that he deſires to lodge with him, ſteal, *&c.* the Hoſt is not chargeale; otherwiſe if one that the Innkeeper appoints to lodge with him; but the Innkeeper is chargeable tho' he deliver not the Goods to the Hoſt, or tho' the Gueſt have the Key. But if the Innkeeper deſire him to lock them up, and he will not, 'tis the Gueſt's own Loſs.

If one go from his Inn and ſay, he will return in two or three Days, and in the Interim his Goods are ſtolen, the Hoſt is not liable. 2 *Cro.* 188, 189. But if one go into the Town, and return not till Night, he is a Gueſt. Sir *Edwin Sands*'s Caſe. And ſo if one leave his Horſe at Livery, tho' himſelf lodge not there, he is a Gueſt, *quoad* his Horſe. *Gill* ver. *Clark.*

Action againſt an Innkeeper who pleads that the Plaintiff had a Key of his Chamber, and a Gueſt to lodge with him, who ſtole, *&c.* and held a good Bar; elſe 22 *H.* 6. 386. they having a Key only, is no Plea; but there that he had a Key, and requeſted a Stranger to lodge with him who robbed him, is a Bar.

But

But if one board and ſojourn in an Inn, the Innkeeper is not reſponſible. 3 *Car.* 1. *B. R.*

A Stranger brings my Horſe to an Inn without my Knowledge, and leaves him there, the Innkeeper may detain him till he is ſatisfied, becauſe he was compellable to keep him, and not at his Peril to know the Owner; ſo if I put my Horſe there my ſelf. *Poph.* 127, 3 *Bulſt.* 270, 389. *Hill.* 14 *Jac.* 1. *B. R.* 201, 650.

Inrollment.

ANY one Juſtice of Peace may joyn with the Clerk of the Peace, in taking of an Inrollment of an Indenture of Bargain and Sale of Lands, *&c.* lying in the ſame County; and each of them is to have Twelve-pence, if the Land exceed not in Value Forty Shillings a Year; and if it do, then Two and Six-pence a-piece; and if they take more, are liable to be fined. 27 *H.* 8. *cap.* 10.

Deeds muſt be inrolled in ſix Months.

But all Deeds to be inrolled according to this Statute, muſt be indented *revera*, and muſt be inrolled within ſix *Lunar* Months after the Date of the ſame Indenture; and if it have no Date then within ſix *Lunar* Months after the Delivery of the Deed; and if it be inrolled the very Day of the Date of the Deed, or the very laſt Day of the ſix *Lunar* Months, it is ſufficient.

Months how to be computed.

When Mention is made in any Statute of Months, they are to be underſtood *Lunar* Months, unleſs otherwiſe expreſſed; but when a Year or Half a Year, or a Quarter of a Year is mentioned in any Statute, then it ſhall be computed according to Kalendar Months. 6 *Rep.* 62. And a Year, or a Twelve-Month (in the ſingular Number) includes the whole Year according to the Calendar; but twelve Months, (in the plural Number) or eight Months, or ſix Months, *&c.* ſhall be accounted after Twenty-eight Days to every Month. 5 *Co.* 135. Except in a *Quare Impedit.*

Iſſues.

Forfeitures of Iſſues how to be levied.

FOrfeitures of Iſſues by Jurors are to be levied by Records of Execution awarded by the Juſtices of Peace, by Stat. 27 *Eliz. cap.* 7.

The

The Sheriff is to levy thoſe Iſſues, and if he levieth other Eſtreats of Iſſues than of Right are due, he forfeiteth five Marks to the King, and as much to the Party. 27 *Eliz. cap.* 7. *Cro.* 201.

Judgment in High Treaſon, Miſpriſion of Treaſon, Petty Treaſon. Vide Treaſon. Felony, Petty Larceny. Vide Felony.

Jurors and Juries.

TRIAL by Juries is very ancient, if not coeval with the Foundations of our Conſtitution, and hath continued through all the Revolutions of Time. *Ad quæſtionem juris reſpondent Judices, ad quæſtionem facti reſpondent Juratores.* This way of Trial is now uſed in no other Country.

Every Engliſhman to paſs two Juries before he can be convicted.

In Matters of Crime and Forfeiture, every *Engliſhman* is to paſs a double Jury before he be condemned, *viz.* the Grand Jury to find the Bill, and the Petty Jury to find the Fact.

Jurors are returned by the Sheriff, by Virtue of a Precept to that Purpoſe; and if any Juror be returned at the Nomination of any other than the Sheriff, or his Bailiff ſworn, the Panel is void, by Stat. 11 *H.* 4. *c.* 9.

Of Challenges.

At Common Law both King and Subject had two lawful Challenges to the Jurors, the one Peremptory, the other upon Cauſe ſhewed; but it is provided by 33 *Ed.* 1. that in caſe of Felony, the King ſhall not challenge peremptorily but muſt ſhew Cauſe which ſhall be tried; and if found not ſufficient, rejected; yet the peremptory Challenge remaineth for the Party; but it is abridged by 32 *H.* 8. *cap.* 3. for whereas at Common Law he might have challenged Thirty-five without Cauſe ſhewn, it is now reduced to Twenty; but he may challenge as many as he pleaſes for Cauſe ſhewn.

Where Jurors are outlawed, their Acts are void; and ſo if not returned by the Sheriff. *Ley* 81.

In an Appeal of Manſlaughter, the Defendant may challenge Twenty peremptorily. *Moor* 12.

Jury de medietate linguæ.

Foreigners are to have a Jury *de medietate linguæ*, ſix *Engliſh*, and ſix Foreigners, if there be ſo many in the Place; if not, as many as may be found there, and theſe may be of any Nation; but the Party muſt pray ſuch Jury. *N. B.* But Perſons calling themſelves

Egyptians

Ægyptians are ouſted of this Benefit, by 1 & 2 *P. & M. cap.* 4.

It is a good Challenge to a Juror that he is one of the Indictors; ſee Stat. 25 *Ed.* 3. *c.* 3. and ſee more fully for Cauſe of Challenge in criminal Matters. *Staundf. fol.* 157. *b.* and *Co.* 1 *Inſt. fol.* 156.

Special Verdict.

The Jury upon any Iſſue (if they doubt of the Law) may give a ſpecial Verdict; and that by the Common Law, before *Weſtm.* 2. *cap.* 30. See *Co. Inſt.* 425.

Grand Jury what and who.

There are two Sorts of Juries, the Grand Jury and the Petit Jury; the Grand Jury conſiſts generally of a Number above Twelve, and under Twenty-four of grave ſubſtantial Gentlemen, or of the better Sort of Freeholders, choſen indifferently by the Sheriff out of the whole County, to conſider of all Bills of Indictment preferred to the Court, which they either approve, by Writing on them *Billa vera*, or diſallow, by indorſing *Ignoramus*. 'Tis beſt to have an odd Number, and if Twelve agree, 'tis concluſive to the reſt.

Petty Jury, what and who.

The Petit Jury conſiſt of Twelve Men, and are impanelled as well upon Criminal, as upon civil Cauſes: Thoſe that paſs upon Offences of Life and Death, do bring in their Verdict either Guilty, or Not guilty: Whereupon the Priſoner, if he be found guilty, is ſaid to be convicted, and ſo afterward receiveth his Judgment and Condemnation; or if Not guilty, is acquitted and ſet free.

Qualification of Jurors.

Perſons qualified to ſerve on Juries by Stat. 2 *H.* 5. *c.* 3. were ſuch as had 40*s. per Ann.* by Stat. 27 *Eliz. cap.* 6. it was made 4*l.* a Year, and by 4 & 5 *W. & M. c.* 24. it is increaſed to 10*l. per Ann.* Freehold, or Copyhold, for their own, or ſome other Perſon's Life, except in Caſes *per medietatem linguæ*. But in Corporations, Felonies may be tried by Freemen worth 40*l.* in Goods, Stat. 23 *H.* 8. *c.* 13. And in *Wales* they muſt have 6*l. per Ann.* and if any be returned of leſs Eſtate, it ſhall be good Cauſe of Challenge; and he ſhall thereupon be diſcharged upon his own Oath. Tales-Men 5*l.* in *Wales* 3 l.

By Stat. 7 & 8 *W.* 3. *c.* 32. The Panel to be returned for the Grand Inqueſt of *Yorkſhire* ſhall conſiſt of Forty-eight Freeholders or Copyholders, and no more, each having 80*l. per Ann.* and at the Aſſizes there ſhall be ten Panels and no more of Petty Jurors, conſiſting of Twenty-four Jurors in each Panel, except where ſpecial Jurors are directed.

Juſtices

Conſtables to return to Juſtices Names of Perſons fit to ſerve on Juries.

7 & 8 W. 3. c. 32.

Juſtices in *Michaelmas* Seſſions yearly, ſhall take from the Conſtables, &c. Return of their Liſts of Names and Places of Abode of Perſons qualified to ſerve on Juries, between the Age of Twenty-one and Seventy; and a Duplicate of thoſe Liſts, the Clerk of the Peace is to deliver to the Sheriff before the firſt of *January* next following. 7 & 8 *W.* 3. *cap.* 32. This Liſt muſt be entred into a Book, and kept among the Records of the Seſſions, and none to be impanelled, whoſe Name is not entred in the Liſt.

Method of returning Juries.

And by Stat. 3 & 4 *Ann. c.* 18. Juſtices at Midſummer Seſſions yearly, are to iſſue out Warrants under the Hands and Seals of two or more of them to the High Conſtables of each Hundred, requiring them to iſſue out their Precepts to the Petty Conſtables, &c. to meet them within Fourteen Days after the Date of ſuch Precept, to prepare a Liſt of Freeholders according to the Stat. 7 & 8 *W.* 3. *c.* 32. which Liſts they muſt ſign and return the firſt Day of *Michaelmas* Seſſions.

The High Conſtables not iſſuing out ſuch Precepts, &c. ſhall forfeit 10 *l.* and the Petty Conſtables not meeting and returning the Liſts, forfeit 5 *l.* This Act 7 & 8 *W.* 3. *c.* 32. to be read publickly in open Court at the Quarter-Seſſions held after the 24th of *June* yearly.

How they are ſummoned.

Jurors are to be ſummoned at leaſt ſix Days before the Seſſions, by ſhewing them a Warrant under the Seal of the Sheriff's Office, if at Home; and if they are not at Home, then a Note muſt be left by the Sheriff's Officer at the Dwelling-houſes of the Perſons, with any Perſon inhabiting there, which is ſufficient. And if any Jurors are ſummoned otherwiſe, or the Sheriff or Bailiff ſhall excuſe any Perſon for Favour or Reward, the Sheriff is liable to a Forfeiture of 20 *l.* to be recovered in the Courts of *Weſtminſter*.

Penalty on Perſons who ought to give in Liſts omitting, &c.

By Stat. 3 *G.* 2. 'tis enacted, That if any Perſons required by the Stat. 7 & 8 *W.* 3. *c.* 32. and 3 & 4 *Ann. c.* 18. to give in, or by this Act to make up true Liſts of the Names of Perſons qualified to ſerve on Juries, ſhall wilfully omit out of any Liſt, any Name which ought to be inſerted, or take Money for omitting or inſerting any Perſon, he ſhall forfeit 20 *l.* on Conviction before one or more Juſtices; one half to the Informer, and the other to the Poor of the Pariſh; and if not paid in five Days, ſhall be levied by Diſtreſs, by Warrant from one or more Juſtices.

What Perſons not to be Jurymen.

Clergymen, Apothecaries, Infants, Aliens, Butchers, Perſons attainted or indicted, and Quakers are not to ſerve on Juries.

If Grand Jurymen discover their Secrets, they may be fined, or if they make a favourable Presentment, they may be committed and fined; or if the Grand Inquest conceal any Thing, the Justices of Peace may impanel an Inquest to inquire of such Concealment, and fine them. 3 *H.* 7. *cap.* 1. And Justices of Peace have Power to alter the Panel, if they see Cause, and may remove a Juror after he is sworn. 3 *H.* 8. *cap.* 12.

Grand Jurymen not doing their Duty, to be fined.

In Confederacies, Felonies, Murders, Robberies and Treasons committed on the High Seas, the Criminal shall be tried where the King shall appoint by his Commission. 28 *H.* 8. *c.* 15. And in Treasons and Misprisions of Treason done out of the Kingdom, the Offenders shall be tried in *B. R.* by a *Middlesex* Jury, or by special Commission in any County by a Jury there. 35 *H.* 8. *cap.* 2.

Where Offences on the High Seas, and in another Kingdom, are to be tried.

If a Jury give a false Verdict in any Court of Record, either in a real or personal Action where the Debt or Damage is above 40*s.* they may be punished by a Judgment in Attaint, but the same Witnesses, and no more must be produced to the Jury to try the Attaint, as gave Evidence to the first Jury. *Dyer* 53.

Jury giving a false Verdict how punished.

If a Juryman shall keep his Fellows without giving any Reason, or shall withdraw from them, he may be committed and fined: But if a Juryman shall differ in Judgment from his Fellows, he ought not to be fined, although his Dissent be not founded on as good Reason as the rest; and although he keep the rest some Time from giving their Verdict. *Cro. Eliz.* 779.

Juryman not doing his Duty, may be fined; but he may differ in Judgment from them.

If any Jury cast Lots whether to find for the Plaintiff or Defendant; 'tis such a Misdemeanor for which they may be fined, and the Verdict set aside, for they are sworn well and truly to try the Issue between the Parties. Jury fineable only for Misdemeanors. *Raym.* 138. *Sid.* 272.

Jury not to cast Lots how to find.

In Cases of Life and Death, if the Jury do not agree of their Verdict at the Assizes, they must be carried round the Circuit till they do agree. 1 *Vent.* 97.

Jury not agreeing, to be carried round the Circuit.

If after the Jury are gone from the Bar, one of them shall call a Witness who was sworn, and had given Evidence in Court, and shall desire him to repeat it again, and he does it accordingly; this is a Misdemeanor for which the Verdict may be set aside. *Cro. Eliz.* 189.

Jurors not to ask Witnesses Questions after gone from the Bar.

If Jurymen shall eat or drink at the Charge of either of the Parties, before or after they are agreed of their Verdict before it be given into Court, they may be

Jurors not to eat and drink at the Charge of the Parties.

be fined, and their Verdict ſet aſide; and if they eat at their own Charge, they may be fined; but then the Verdict may be good. 1 *Leon.* 133. *Dyer* 137.

None to give Directions to the Sheriff whom to return.

If one Juror be outlawed, or returned at the Nomination of another, it will make the whole Panel void, and none are to give Direction to the Sheriff what Perſons to return on a Jury; for an Attorney was turned over the Bar for ſuch an Offence. *Moor* 882.

Challenges.

Challenge to the Array, is challenging the whole Panel for ſome Irregularity.

Challenge or Excepting againſt the Polls is a Challenge to the particular Perſons; but there can be no Challenge either to the Array or the Polls, till the Jury is full; and that as well by a Tales, as if all on the principal Panel appear, and the Challenge muſt be before they are ſworn, or elſe it will be too late. *Yelv.* 3.

Challenge to the Array.

A principal Challenge to the Array may be 1. In reſpect of Partiality, or Kindred in the Officer who returned the Panel; as if the Sheriff be of Kin to either of the Parties. 2. If any Juror is return'd at the Deſire of the Party. 3. If either Party have an Action of Debt againſt the Sheriff, but not *e converſo*. In all theſe Caſes the whole Array muſt be quaſhed; but if one Man be ſworn the Array cannot be challenged. *Cro. Eliz. Style* 233.

To the Polls.

Challenge to the Polls may be 1. *propter honoris reſpectum*, as if a Peer be returned of the Jury in the Caſe of a common Perſon.

If a Peer is Defendant, there muſt be a Knight return'd on the Jury, &c.

If a Peer is Defendant, there muſt be a Knight of the Jury, or the Array may be challenged; but it hath been a Queſtion if he is Plaintiff, and will not challenge, for that there is no Knight return'd, whether the Defendant might do it, and it ſeems he may not, *Dyer* 107. 2. *propter defectum patriæ libertatis*, as *Aliens*; *aut annui cenſus*, as not having 10*l.* a Year, *&c.* 3. *propter affectum.* 4. *propter delictum*, as Perſons attainted or outlawed.

Where there is either expreſs Malice or Favour; as if the Juror be of Kin to either Party, let it be never ſo remote, or by Marriage.

If he hath given a Verdict already in the ſame Cauſe, but then he muſt produce the Record if he will conclude it as a principal Challenge: If a Suit at Law depending between the Juror and Party.

The Queſtion was concerning a Way, and the Juror was challenged becauſe he had affirmed before the Trial, that there was a Way, and that it wou'd be an Injury

njury to the County if it ſhou'd be found otherwiſe, nd the Challenge was allowed.

Indictment in *B. R.* for a Battery committed at *Canterbury*, and one of the Jurors was challenged becauſe he had been of the Grand Jury who found the Battery, and it was allowed. *Sid.* 244.

It was likewiſe allowed becauſe the Proſecutor had been entertain'd at the Houſe of a Juryman. 1 *Vent.* 309.

If a Juror is ſerved with a *Subpœna* as a Witneſs on either Side, or hath declared how he will find his Verdict, or for whom, theſe are good Cauſes of challenge. 1 *Bulſtrode* 101.

But he ſhall not be examined to any Matter criminal or infamous of himſelf, in order to Challenge him.

The Form of a Challenge to the Array, for that the Panel was returned at the Inſtance of either Party.

ET ſuper hoc pred' T. calumniat arraiamentum Panelli illius quia dicit quod Panellum illud arraiat' fuit per J. S. nuper Vic' Com' pred' ad denominationem pred' A. B. & in favorem ejus quequidem calumnia per triatores inde jur' comperta eſt vera.

How many Priſoners may Challenge.

In an Appeal of Manſlaughter, and upon an Indictment of Murder, a Man may challenge twenty Perſons peremptorily, that is, without aſſigning any Cauſe; *per Stat.* 22 *H.* 8. *c.* 14. for by the Common Law he might have challenged any Number under three full Juries. *Moor* 12. And if he Challenge more there is no Penalty, but the Court is to over-rule the Challenge. And in caſe of Treaſon, a Man may challenge Thirty-five; *per Stat.* 1 & 2 *P.* & *M. c.* 10.

Stat. Weſtm. 2. c. 18. does not extend to criminal Caſes.

By Stat. *W.* 2. *c.* 18. Sheriffs are to ſummon in one Aſſize twenty-four and no more; but it has been adjudged that this Statute extends only to Jurors returned in civil Caſes, and not for Trials of Criminals; for in ſuch Caſes the Sheriffs might be commanded by the Court to return as many as they pleaſe; and 'tis uſual to return Sixty, becauſe of the Challenges. *Kelynge* 16.

By Stat. 3 G. 2. 'tis enacted, That no Perſons ſhall be returned as Jurors to ſerve on Trials at any Aſſizes, or *Niſi Prius*, &c. who have ſerved within one Year

before, in the County of *Rutland*, or four Years in the County of *York*, or two Years within any other County, not being a County of a City or Town; and if any Sheriff offend contrary hereto, Judge of Aſſize may fine him not exceeding 5 *l.* for one Offence.

In Middleſex no Perſon to be return'd on a Jury, who has ſerv'd within two Terms, &c. before.

But by Stat. 4 *G.* 2. this Clauſe ſhall not extend to the County of *Middleſex*, in which County no Perſon ſhall be return'd to ſerve as a Juror at any Seſſions of *Niſi Prius* in the ſaid County, who has been returned as a Juror at any ſuch Seſſion of *Niſi Prius* in the two Terms or Vacations next immediately preceding, under ſuch Penalty on the Sheriff, or other Officer imployed in the Summoning or Returning of Jurors in the ſaid County, as might have been inflicted on them for any Offence againſt the ſaid Clauſe. And all Leaſeholders upon Leaſes, where the improved Rents or Value do amount to 50 *l.* or upwards *per Ann.* over and above all Ground Rents, or other Reſervations, payable by Virtue of the ſaid Leaſes, ſhall be liable and obliged to ſerve upon Juries when they ſhall be legally ſummoned for that Purpoſe.

Perſons in Yorkſhire not to ſerve on Juries above once in four Years, 1 Year in Rutland, and 2 Years in other Counties. And their Names to be regiſtred.

In Stat. 7 & 8 *W.* 3. There is a Clauſe inhibiting Perſons in *Yorkſhire* to ſerve on Juries more than once in four Years, except in the City of *York*, and Town of *Hull*, and Counties of the ſaid City and Town.

That at the Requeſt of ſuch Jurors, the Sheriffs of *Yorkſhire* ſhall regiſter their Names at the End of every Aſſize and Seſſions, and ſhall give them a Certificate of their Attendance and Service.

That at the Aſſizes or Seſſions, there ſhall be but forty Perſons returned to ſerve on the Grand Inqueſt, or any other Service.

Then there is a Clauſe that the Inhabitants of *Weſtminſter* ſhall not ſerve in any Jury at the Seſſions held for *Middleſex*.

A Man above Seventy muſt ſerve if Judge directs.

If a Man above ſeventy Years old be returned, he muſt ſerve, if the Judge directs it; but he may ſue the Sheriff upon *Weſtm.* 2. *cap.* 38.

The Stat. 4 & 5 *W.* & *M.* *c.* 24. being made but for three Years, was continued by 7 & 8 *W.* 3. *c.* 32. for 7 Years; and by another Act 1 *Anne* *c.* 13. was further continued for 7 Years, was by another Act 10 *Anne* *c.* 14. continued for 11 Years from the Expiration thereof, and from thence to the End of the next Seſſion of Parliament.

To what the Word Seſſions ſhall extend.

By Stat. 10 *Ann.* 14. The word Seſſions of the Peace in the Act 7 & 8 *W.* 3. *c.* 32. ſhall be conſtrued to extend to any Seſſions of the Peace to be holden for any of the Ridings,

Ridings, and to Adjournment of ſuch Seſſions; but any Perſon of 150 *l. per Ann.* or more, ſerving as a Juror at ſuch Seſſions, ſhall not be exempted from ſerving as a Juror at Aſſizes in *Yorkſhire* for four Years, or any other Term.

The Grand Jury ought not to have a Keeper, but a Bailiff to wait upon them, nor to be without Victuals; but may be adjourned to bring in their Bills.

What the Grand Jury can enquire of.

Regularly the Grand Jury cannot enquire into any Thing but what ariſeth in the County, for which they are returned; and therefore if a Stroke be given in one County, and the Death happen in another, the Party could not be indicted where the Perſon died; but this is now remedied by the Stat. 2 & 3 *Ed.* 6. *c.* 24.

Where a Writ of Attaint lies.

Any Perſon who is injured by a falſe Verdict, may have a Writ of Attaint againſt the Jury, unleſs where the King alone is a Party againſt a Subject, and the Jury find for him, though falſly; yet no Attaint lies in ſuch Caſe; but 'tis otherwiſe where the Suit is *tam pro Domino Rege quam pro ſeipſo*; but this Way of puniſhing a Jury is ſeldom uſed, except where the Corruption is apparent.

Jury not to be fined only for finding contrary to Direction of the Court.

But a Jury cannot be fined only for giving a Verdict contrary to Evidence, where an Attaint lies againſt them, or where it does not; becauſe it is impoſſible for the Judges to know the Fact as the Jury may; for the Judge knows it no otherwiſe, but by the Evidence given in Court; but the Jury are ſuppoſed to know it by other Methods, *viz.*

By being returned of the Vicinage, by their own perſonal Knowledge, by knowing the Witneſſes to be Perſons of no Credit. *March* 11. 3 *Leon.* 207.

So that, if the Judges cannot have ſo much Evidence of the Fact as the Jury may, they may go againſt his Direction in Law; becauſe where the Fact is not agreed, he cannot direct what is Law. *Vaughan* 147. So that for Miſdemeanors they may be fined, but not barely for finding againſt the Direction of the Court. So in *Baynes*'s Caſe, where the Jury agreed of two Verdicts intending to conceal one, if the Court ſhould be ſatisfied with the other. *Cro. Eliz.* 778. And in *Wharton*'s Caſe they were not fined for giving their Verdict againſt the Direction of the Court only; but the Judges were of Opinion, that ſome unlawful Practices had been uſed to procure that Verdict. *Yelv.* 83.

But fined if unlawful Practice to gain a Verdict.

So on toſſing up Croſs and Pile.

In *Fry* and *Hardy*'s Caſe, the Verdict was ſet aſide; becauſe it was given upon toſſing up a Sixpence, if Croſs for the Plaintiff, if Pile for the Defendant;

and the Sixpence coming up Croſs, they all agreed to find for the Plaintiff. This was a *Northumberland* Jury, and they were ordered to attend the following Term, in order to be fined. *Jones* 83.

So in *Wagſtaff*'s Caſe, the Jury were fined and committed, and upon a *Habeas Corpus* brought, they were not bailed; but it muſt be for ſome Miſdemeanor, and not barely for refuſing to find according to their Evidence. *Hard.* 409. *Raym.* 138. *Sid.* 272.

Or caſt Lots. So if they caſt Lots whether to find for the one or the other, 'tis a Miſdemeanor. 2 *Lev.* 140, 203.

Jurors asking Witneſſes Queſtions after withdrawn, and Evidence given, a Miſdemeanor allowed to ſet aſide a Verdict. *Cro. Eliz.* 189. 2 *Salk.* 644.

If the Jury at a Seſſions cannot agree on their Verdict, they may, as in other Courts, be kept without Meat, Drink, or Fire, 'till they agree.

Or for having Apples about them, though did not eat them. Jurymen have been fined for having Figs and Apples in their Pockets, though they did not eat them. *Moor* 599. 1 *Leon.* 133.

The Foreman of the Jury declared that the Plaintiff ſhould never have a Verdict, let him produce what Evidence he would; and upon *Affidavit* made of this Matter, a new Trial was granted.

By 4 & 5 *W.* & *M. cap.* 24. Sheriff, Clerk of Aſſizes, or any other Officer taking Fee, &c. for returning of any Tales, ſhall forfeit 10 *l.* to the King and Proſecutor.

Defendant muſt pray medietatem linguæ. Jury of all Denizens where the Defendant is extraneous, is good, unleſs he pray a Jury *per medietatem linguæ*, 3 *Cro.* 869. and where a Baron is ſued, a Knight muſt be returned of the Jury. *Ibidem.*

All the Jurors muſt be ſworn, otherwiſe their Preſentments are void; but the Record being that all the Jurors were ſworn, the Preſentments are good, tho' all be not ſworn. *Lam.* 399.

Jurors amerced for refuſing to preſent, being ſworn. 1 *Co.* 39. 2.

Juror, after he is ſworn, upon Cauſe may be removed, or the Panel altered by the Juſtices. *Lam.* 400.

Juror muſt not be returned without Addition. No Juror is to be returned without an Addition, whereby he may be known. 27 *Eliz. c.* 7. *Lam.* 432.

If a Peer be returned on a Jury and ſworn, he may be challenged by either Party, or he may challenge himſelf. 1 *Inſt.* 156.

The Array may be challenged where a Peer is Party, and no Knight returned of the Jury. *Ibidem.*

A Jury

A Jury fined 10*l.* for not finding a Bill upon plain Evidence. *Sid.* 219.

But a Nobleman being to be tried, cannot challenge any of his Peers, being to try the Cauſe upon Honour.

One indicted of Felony may challenge as many as he will, ſhewing Cauſe; but without Cauſe he may not challenge above Twenty. 22 *H.* 8. *cap.* 14. *Lamb.* 554. 28 *H.* 8. *cap.* 1.

Good Cauſe of Challenge if Proſecutor is of the Jury.

If one Man indicts another of Felony who pleads, and he who indicted him is returned upon the Jury, it is good Cauſe of Challenge. *Lib. Aſſiſ.* 12. *fol.* 37. *Pl.* 36. *Paſch.* 7. *Ed.* 4. *fol.* 4. *Pl.* 11. *Mich.* 18 *Ed.* 4. *fol.* 12. *Pl.* 8.

A Man is indicted for Murder, the Jury may find it Manſlaughter. *Plowd. Com. fol.* 101.

When the Challenge is to be made.

Any one may challenge for the Crown, as well as King's Counſel, and when they have Cauſe to challenge, they muſt challenge them as they are called to the Book; but they are to ſhew the Cauſe of their Challenge before that the other Jurors which are not challenged are ſworn; and then if the Cauſe ſhewn be ſufficient, the Juror challenged ſhall be withdrawn. *Mich.* 8 *Jac. Bulſtr. Rep.* 1. *p.* 84. *Morgan's* Caſe.

Jury can't find one guilty of Burglary, and the other of Felony on the ſame Indictment, and the ſame Evidence.

T. &c. his Wife and two of his Sons, were indicted at the *Old-Baily*, for that they *Felonice & Burglariter* broke the Houſe of *F. T.* and took away Money and Jewels to the Value of 5000*l.* the Jury found *T.* guilty of Burglary, and one of his Sons guilty of Felony, and the others they acquitted, and all upon the ſame Indictment, and the ſame Evidence. And the Judges were of Opinion, that the Jury might have found them all guilty of the Felony; but they could not find one guilty of Burglary, and the other of Felony, upon the ſame Indictment, and the ſame Evidence. *Mich.* 15 *Car.* 2. *Sid.* 171. *Pl.* 4. *Rex* verſus *Turner* and his Wife, and two of his Sons.

Where Jury ought to find all or none.

An Indictment of forcible Entry and Detainer was preferred againſt *S.* and the Jury found, as to the Detainer with Force, *billa vera*; but as to the Entry *Ignoramus*. The Court was of Opinion, that the Jury ought to have found all or none, and quaſhed the Indictment. *Paſch.* 21 *Car.* 2. *B. R. Vent. Rep. pag.* 25. The King *verſus* Serjeant.

The Juſtices Precept to the Sheriff to return a Jury.

GEorgius, &c. Vic' Eſſex' ſalutem Præcipimus tibi quod non omittas propter aliquam libertatem Com' tui quin venire facias coram Juſticiariis noſtris ad pacem in Com' præd' conſervand' aſſign' apud K. in Com' præd' 8 die Julii proꝛ' ſequend' 24 probos & legales homines de Hundred' de K. ad audiend' & faciend' ea que ex parte noſtra adtunc & ibid' illis fuerit injungend' & habeas tunc ibidem hoc Mandatum T. F. W. Baronetto apud K. tali die, &c.

A Warrant from the Juſtices in Seſſions to the Conſtables, to make Return of Perſons fit to ſerve on Juries.

Glouc. ſſ. Ad Generalem Quarter' Seſſion' Pacis, &c. tent' pro Com' præd' apud, &c. die & Anno, &c.

3 & 4 Annæ. *THESE are in His Majeſty's Name to command you to ſend your Precepts to all the Petty Conſtables and Tithing-men within your Hundred, to give you a Meeting within fourteen Days after the Date of ſuch your Precepts, in order to prepare a Liſt of Freeholders qualified according to the Acts of Parliament to ſerve on Juries at the next* Michaelmas *Quarter-Seſſions to be held for the County aforeſaid; and that they do ſign ſuch Liſts reſpectively, and that you do make Return thereof the firſt Day of the ſaid* Michaelmas *Quarter-Seſſions; and hereof you and they are not to fail, at your Perils.* Given, &c.

Juſtices of Peace.

THE Original Power, Authority, &c. of Juſtices of Peace in general, you will find fully ſpoken of in the Beginning of this Treatiſe, *pag.* 2. and thither I refer you.

Keels. Vide Coals.

King and Queen.

NO Patent or Office, Civil or Military, to ceaſe 'till ſix Months after Demiſe of King or Queen, unleſs made void by next immediate Succeſſor. Juſtices may proceed in Buſineſs at Aſſizes or Seſſions, &c. 7 *W.* 3. *c.* 27. 1 *Ann. c.* 8. 4 *Ann. c.* 8. 6 *Ann. cap.* 7.

Juſtices may proceed at Aſſizes or Seſſions, tho' the King ſhould die.

Labourers. Vide Apprentices and Servants.

Lamps and Lights.

HOuſekeepers in *London*, or within the weekly Bills of Mortality, whoſe Houſes adjoin to, or are near the Street, are to hang out Lights every Night from *Michaelmas* to *Lady-Day*, from the Time it is dark, 'till Twelve a-Clock, or to pay for Lamps, under the Penalty of 2 *s.* for every Default, to be levied by Diſtreſs; and if not paid in ſix Days, to be committed 'till Payment. 2 *W.* & *M. c.* 8.

Houſekeepers to hang out Lights, or pay to Lamps. Lights from Michaelmas to Lady-Day, or pay 2 s.

Conviction to be on View of Juſtice, Confeſſion, or the Oath of one Witneſs before one Juſtice.

Two Juſtices are to approve the Diſtance which one Lamp is to be ſet from another.

By an Act paſſed 1 *G.* 2. For the better inlightning the Streets of the City of *Canterbury*; the Mayor, Recorder, and Juſtices at *Midſummer* Quarter-Seſſions, ſhall appoint a proper Perſon to fix and light the Lamps in the Streets, Lanes, or other publick Places, from *September* 1 to *May* 1, yearly, from the Time it grows dark 'till 12 at Night; and the Mayor, Recorder, and Juſtices at the Quarter-Seſſions ſhall appoint one Inhabitant of each Pariſh to ſettle a Rate not exceeding 3 *d.* in the Pound on the Inhabitants

Mayor, &c. of Canterbury, may appoint a Perſon to fix and light Lamps, &c.

for maintaining the Lamps; and the Mayor, Recorder, and Juſtices are to appoint Collectors for collecting the ſame quarterly; and if any Perſon ſhall refuſe to aſſeſs or collect, being thereto appointed, he ſhall forfeit 5 *l.* and if any Perſon aſſeſſed ſhall refuſe to pay the ſame by the Space of 14 Days after Demand, the Collectors, by Warrant, may diſtrain, rendring the Overplus after neceſſary Charges deducted. Perſons aggrieved may appeal to the next Quarter-Seſſions, who are finally to determine the ſame.

The Money aſſeſſed and collected for the Lamps ſhall be accounted for by the Collectors, to two or more Juſtices (the Mayor to be one) as often as the Juſtices ſhall require ſuch Account; and if the Collector ſhall refuſe to account and pay the Monies in his Hands to ſuch Perſon as the Juſtices direct, the Mayor, or any two Juſtices, ſhall commit him to the common Gaol without Bail, 'till he ſhall account and pay ſo much as ſhall appear to be remaining in his Hands.

A Warrant to levy the Penalty for Default of putting up Lamps.

2 W. & M. 2. 8. *WHereas it has been duly proved before me, that* A. B. *of your Pariſh, has made Default in hanging out a Light at his Door for three Nights ſucceſſively,* viz. 1, 2, *and* 3, &c. *of this Inſtant,* &c. *without making any Agreement for Lamps inſtead thereof, contrary to an Act of Parliament in that Caſe made: Theſe are therefore to require you to levy, by Diſtreſs and Sale of the Goods of the ſaid* A. B. *the Sum of* 6 s. *which he has forfeited for the three ſeveral Defaults aforeſaid.* Given, *&c.*

Larceny. Vide **Felony.**

Leather, Hides, &c.

THE two chief Statutes which relate to Leather are, 1 *Ja.* 1. *c.* 22. and 9 *Annæ c.* 11.

Tanners to ſerve 7 Years Apprenticeſhip, &c.

No Perſon ſhall tan Leather, *&c.* unleſs he hath ſerved an Apprenticeſhip for ſeven Years, or been inſtructed therein for that Time, or be a Widow or Daughter of a Tanner, by whom a Tanfat ſhall be left, or a Son to whom ſuch Tanfat ſhall be ſo left, which hath

hath uſed the Trade for four Years, on Pain of forfeiting the Leather tanned, or the Value thereof. 1 *Jac.* 1. *cap.* 22. And if a Butcher uſe the Trade of a Tanner, he ſhall forfeit 6 *s.* 8 *d. per* Day.

And Leather ſhall not be put to be curried by any Artificer in *London* or three Miles thereof, but to ſome Perſon free of the Company of Curriers in *London*, or forfeits the ſame or Value thereof.

Hides not to be gaſhed.

If any Hides ſhall be gaſhed by the Currier in ſhaving, ſuch Currier ſhall forfeit to the Party grieved double Damages; and if ſpoiled or impaired, the Forfeiture is 6 *s.* 8 *d.* beſides the Value of the Hide or Skin.

Nor bought rough in the Hair, but by Tanners; nor watered.

Hides muſt not be bought rough in the Hair by any Perſons but Tanners (except Salt Hides for the Uſe of Ships) on Pain of forfeiting the Hides, or the Value: Or watered, except in the Months of *June*, *July*, and *Auguſt*, on forfeiting 3 *s.* 4 *d.* for every Hide; and if tanned Leather be bought at any other Place but in Fairs and Markets, there is a Forfeiture of 6 *s.* 8 *d. per* Hide.

Tann'd Leather muſt be bought in Fair or Market.

Tanning unſound Leather, &c. the Forfeiture.

If any Perſon tan unſound Hides, or Sole-Leather not continued twelve Months in the Wooſes, and upper Leather nine Months, or ſhall neglect to work Hides in Wooſe, or not renew and ſtrengthen them, he ſhall forfeit every Hide ſo tanned and put to ſale: The ſame Forfeiture if he ſhall raiſe Hides for Sole-Leather by any Mixture; and if a Tanner haſtneth the Tanning by any unkind Heats with hot Water, he forfeits 10 *l.* and ſhall ſtand in the Pillory in the next Market-town on three Market-days. 1 *Jac.* 1. *c.* 22.

What Hides eſteemed Leather.

Hides or Skins of Ox, Steer, Bull, Cow, Calf, Deer, Goat and Sheep tanned or tawed, and Salt Hides are reputed Leather within the Act 1 *Jac.* 1. *cap.* 22.

Materials in Tanning.

And if a Tanner ſhall over-lime Hides, or uſe any Thing but the Bark of Aſh or Oak, Culver-dung, or Hen-dung, Lime, Malt, Meal, Tapwort, he ſhall forfeit every Hide; and if he ſhall ſuffer Hides to be frozen, or be parched with Fire or the Sun, the Forfeiture is the ſame.

Leather not well tanned and dried; ſearched and ſealed, &c.

If any Leather ſhall be put to Sale not being ſufficiently tanned and dried, the Perſon expoſing it to Sale, ſhall forfeit the ſame. And if any Perſon ſhall buy any tanned Leather before it be ſearched and ſealed, or ſhall carry it out of the Fair or Market before it is regiſtred, he ſhall forfeit 5 *l.* to be divided into three Parts, in *London*; one to the Seizor of the Leather, another to the Chamber of *London*; and the

Forfeiture.

Third

Third to the Poor; to be recovered in the Quarter-Seſſions. 1 *Jac.* 1. *cap.* 22.

The Mayor and Aldermen of *London* are to chooſe and ſwear yearly eight expert Men out of ſome of the Companies of Shoemakers, Curriers, Girdlers, and Salders, to be Searchers and Sealers of all tanned Leather (one of which Number is to be Seal-keeper) on Pain of forfeiting 40 *s.* to be divided between the King and Proſecutor. And Head Officers in Corporate and Market Towns, and Lords of Liberties and their Stewards are to appoint and ſwear yearly two at the leaſt, honeſt and skilful Men, to be Searchers and Sealers of Leather, on the like Forfeiture of 40 *s.* And Searcher or Sealer refuſing to execute the Office, forfeits 10 *l.* 1 *Jac.* 1. *cap.* 22.

Searcher, &c. refuſing to do his Duty, how puniſhed.

Searcher or Sealer refuſing to do his Duty in convenient Time, or approving inſufficient Wares, is liable to the Forfeiture of 40 *s.* and if a Searcher or Sealer ſhall take any Bribe, or exact more than the Fees which belong to his Office, he ſhall forfeit 20 *s.* to be divided into three Parts, as above, in caſe Leather ſhall be bought before it ſhall be ſearched and ſealed, &c. And if any Perſon hinder the Searcher or Sealer in the Execution of their Office, he forfeits 5 *l.*

One hindring a Searcher in his Office, forfeits 5 l.

If any Perſon ſhall ſell tanned Leather (red or unwrought) before it be regiſtred, he ſhall forfeit the Value thereof, to be divided into Thirds, *ut ſupra.*

Wares made of Leather to be viewed every Quarter of a Year.

And in *London* the Maſter and Wardens of the Companies of Shoe-makers, &c. are to make a Search every Quarter of a Year at leaſt, and view all Wares made of tanned Leather, and have Power to ſeize all inſufficient Leather; and if they neglect to make ſuch Search, they ſhall forfeit 40 *s.* for every Year's Default. 1 *Jac.* 1. *cap.* 22.

Searchers, &c. muſt regiſter tanned Leather ſold in Markets, &c. with the Prices thereof, and the Names of Buyer and Seller, taking of each 2 *d.* for ten Hides, and 2 *d.* for every ſix Dozen of Calves or Sheep Skins.

By whom Triers are appointed, &c.

There are ſix Perſons in *London* appointed by the Lord Mayor, &c. and in other Places by the Chief Officer, upon Oath, to be Triers within fifteen Days after Seizure, &c.

Perſons not appointing, and Triers neglecting their Duties, forfeit 5 *l.* for every Default.

Four of the Triers in *London* ſhall be removed every Year, and others put in their room; and none ſhall be in that Office above two Years, and afterwards ſhall

ſhall not be choſen again within three Years; Forfeiture for every Month otherwiſe continuing in the Office 10 *l.*

If any Perſon expoſe to Sale tanned Leather unwrought, unleſs in a Fair or Market, not ſearched and ſealed before, or ſhall offer to ſell any ſuch Leather before it be ſearched and ſealed, he forfeits 6 *s.* 8 *d.* for every Hide, and 3 *s.* 4 *d.* for every Dozen of Calf-Skins or Sheep-Skins, beſides the Hides and Skins themſelves.

The Forfeiture for foreſtalling Hides.

If any Perſon ſhall foreſtal Hides, or buy them otherwiſe than in open Fair or Market, he ſhall forfeit 6 *s.* 8 *d. per* Hide; and if any Perſon ſhall buy rough Hides or Calves Skins in the Hair, except ſuch as can lawfully tan them, he ſhall forfeit them, or the Value.

When Trees are to be cut down for Bark.

Where Oak-Trees are felled, which will produce Bark, when the Bark is worth 2 *s.* a Cart-Load, (except Timber for Repairs of Houſes, Ships, &c.) if the Fellers ſhall cut them down at any other Seaſon in the Year but between the firſt Day of *April* and the laſt Day of *June*, they ſhall forfeit the Trees, or double the Value of them. 1 *Jac.* 1. *cap.* 22.

Ingroſſing Bark.

And if any Perſon ſhall engroſs Bark with Intent to ſell the ſame again, he ſhall forfeit the ſame, or the Value.

Curriers making up Leather before it be ſearched.

If a Currier in *London* makes into Wares any curried Leather before it be ſearched and ſealed, he ſhall forfeit 6 *s.* 8 *d.* for every Hide and Skin, and the Value of every ſuch Hide and Skin. 1 *Jac.* 1. *c.* 22.

Currier not to uſe the Trade of Tanner, Shoe-maker, &c.

And if a Currier ſhall uſe the Art of a Tanner, Shoe-maker, Butcher, or any other Trade which depends upon cutting of Leather, he ſhall forfeit 6 *s.* 8 *d.* for every Hide and Skin he ſhall cut. 1 *Jac.* 1. *cap.* 22.

Leather to be ſold in open Shop, Market, &c.

Artificers concerned in Leather-ſelling any where but in open Shop or Market, &c. where due Search may be made, ſhall forfeit the Wares, and 10 *s.* for every Offence.

Currier not doing his Duty, how puniſhed.

If a Currier in *London* ſhall not curry his Leather well, he ſhall forfeit the ſame, or the Value. And if a Currier ſhall buy tanned Leather, and curry it, and ſell the ſame to a Shoe-maker not cut out, he is puniſhable. 1 *Cro.* 425.

By Statute 9 *Ann. c.* 11. A Tanner or other Perſon ſhaving or cauſing to be ſhaved Hides or Calf-Skins before they are tanned, whereby it ſhall be impaired, or the Duty diminiſhed, he ſhall forfeit ſuch Hides

or

or Skins, or the Value, by Warrant from two Juſtices, to be levied by Diſtreſs; but ſuch Juſtices have Power to mitigate the Penalty, ſo as the ſame be not reduced to leſs than a fourth Part, beſides the Coſts and Charges in the Proſecution. Proſecution muſt be in three Months.

Tanners, &c. to give in their Names, and where their Tan-Yards lie, &c.

All Tanners, Curriers, Tawers, Leather-Dreſſers, Hide-Dreſſers, Makers of Vellum and Parchment, are to give Notice in Writing to the proper Officer of their reſpective Names and Places of Abode, Tan-Houſes, Yards, Work-Houſes, Mills, or other Places for Tanning, Tawing, or Dreſſing any ſuch Hides or Skins, or ſhall forfeit 50 *l.* to the King and Informer, ſubject to Mitigation, *ut ſupra*. And if Owners or Occupiers of ſuch Tan-Yards, &c. refuſe the proper Officer Entrance, they ſhall forfeit 50 *l.*

Uſing private Tan-Yards.

If any Tanner, Tawer, Currier or Dreſſer of Hides, &c. ſhall uſe any private Tan-yard, &c. or ſhall not give timely Notice of taking the Hides, &c. out of the Wooze, or do not make Entries of Hides, &c. or ſhall remove or carry away the ſame, or any Part thereof; or hide, or conceal any Skins, &c. he ſhall forfeit 20 *l.* and the Skins, &c. but the Penalty may be mitigated, as above.

Forfeiture.

Juſt Scales and Weights to be kept.

If any Tanner, &c. ſhall not keep juſt Scales and Weights, or ſhall not permit, or ſhall neglect to bring to be weighed, or to aſſiſt at the weighing or removing Hides, &c. before the Duties are charged, and the Skins, &c. marked, he ſhall forfeit 50 *l.* ſubject to Mitigation, &c.

Tanners not paying Duty forfeit double.

Tanners, &c. not paying the Duty with which Hides and Skins are chargeable, ſhall forfeit double the Duty. And if they ſhall ſend, deliver, or carry out any Hides, &c. before the Duty is paid, they ſhall forfeit double the Value of ſuch Hides ſo delivered, &c. but liable to Mitigation.

Tanners to account for the Duty once in three Months. Officer's Duty.

Tanners, &c. not accounting with the proper Officers once in three Months, ſhall forfeit 30 *l.* but may be mitigated, *ut ſupra*.

If any Officer ſhall take any Fee or Reward for Entries, Accounts, Permiſſions, Certificates, Marks or Receipts, he ſhall forfeit five Pounds to the Party grieved.

Juſtices Power to adminiſter Oaths, &c.

One Juſtice hath Power to adminiſter Oaths to Tanners, &c. of their making Entries, and giving Notice, &c. to Officers, and alſo to adminiſter Oaths to Officers for the Duties on Hides, &c. before they act.

By the Act 1 *Jac.* 1. *c.* 22. Exportation of Leather was prohibited, but by 20 *Car.* 2. *cap.* 5. it was made lawful, paying for every Hundred Weight 12 *d.* which Act was revived by 1 *W.* & *M.* *c.* 3. and 7 & 8 *W.* 3. *cap.* 36.

'Tis now lawful to export Leather.

The Money forfeited by 1 *Jac.* 1. *c.* 22. muſt be divided into three Parts, *viz.* between the King, Proſecutor, and Corporation, or Lord of the Liberty.

How the Forfeitures are to be applied.

The Value of the Wares, if within the Juriſdiction of *London*, into three Parts, *viz.* between the Seiſor, Chamber of *London*, and Poor; and in all other Places between the Seiſor, Head Officer, and to charitable Uſes.

Two Juſtices may hear and determine Offences againſt both the ſaid Acts by ſummoning the Party accuſed, and the Witneſſes on either Side, and examining them on Oath; but the Proſecution muſt be within three Months after Seizure, for the Offence committed; and an Appeal lies to the Seſſions, and no *Certiorari* ſhall be allowed; yet the Juſtices may mitigate the Forfeiture, ſo as the Charges of Proſecution be allowed over and above ſuch Mitigation; and ſo as the Penalty be not reduced to leſs than a fourth Part.

Two Juſtices may hear and determine; but Appeal lies to the Quarter-Seſſions.

N. B. That Commiſſioners on this Statute have the ſame Power as Commiſſioners of Exciſe; and all Commiſſioners and Officers are liable to the ſame Diſabilities and Forfeitures as in 9 & 10 *W.* 3. *c.* 24.

N. B. Stat. 10 *Ann.* *cap.* 26. lays Additional Duties on Hides, &c.

By the afore ſaid Stat. 9 *Ann.* *c.* 11. 'tis enacted, that after the Duty is paid, and Entry thereof made in the Officer's Book, he ſhall cauſe every Hide and Skin to be marked in ſuch Place as the Tanner deſires; and if removed from the Yard or Drying-Place by the Tanner, &c. or if any Buyer ſhall carry it from thence before it ſhall be marked, they ſhall reſpectively forfeit 50 *l.* for each Offence; one Moiety to the Crown, the other to the Informer, and the Skins are forfeited to the Crown. 9 *Ann.* *c.* 11.

Officers to mark the Hides as Tanner deſires.

And no Information ſhall be brought in the Courts at *Weſtminſter*, in Caſes where theſe Offences are cognizable by the Juſtices; and no *Certiorari* ſhall be allowed to remove their Proceedings; but their Determination ſhall be final.

A Currier bought two Hides of tanned Leather of Perſons unknown; and after curry'd them with Oil and Tallow, and other Things neceſſary; and after

Curriers not to buy nor ſell by Wholeſale.

after ſhaved and died them, and ſo being wrought ſold them. The Court held that this is a Buying and Selling by Wholeſale; and a Currier may not buy nor ſell by Wholeſale, within the Statute 1 *Jac.* 1. *c.* 22. *Trin.* 16 *Car.* 1. *Cro. Car.* 587. *Jones's Rep.* 467. *Lodge* ver. *Hollowel.*

An Information againſt a Perſon not being a *Tanner*, for buying raw Hides and ſelling them again not tanned.

1 Jac. 1. c. 22. Eſſex, ſſ. MEmorand' qd' &c. ven' A. B. qui tam &c. & dat curie hic intelligi & informari qd' quidam L. M. de C. in Com' pred' ſutor 18 die Marcii ult' preterit' ante exhibitionem huſus informationis apud C. pred' in Com' pred' emebat de diverſis perſonis quarum nomina prefat' A. B. qui tam &c. incognita ſunt viginti pelles hirſutas (Angl' rough Hides) pretii cujuſlibet pellis inde 6 s. 8 d. prefat' L. M. adtunc non exiſten' corriator vel perſona que licite potuit pelles pred' deplere que quidem pelles non fuerunt facte pro uſu neceſſario navium contra formam ſtatut' in hujuſmodi caſu edit' & provis' per quod pred' L. M. forisfecit, &c. legalis monete viz. valorem pred' pellium unde pred' A. B. tam pro eodem Domino Rege quam pro ſeipſo per' adviſamentum curie in premiſſis quodque forisfactura pred' in tres equales partes dividatur juxta formam Statut' pred' ac quod ipſe idem A. B. qui tam &c. unam partem inde habere valeat juxta formam Statut' pred' &c.

A Warrant to levy the Forfeiture for buying Leather before it be ſearched and ſealed.

1 Jac. 1. c. 22. Eſſex, ſſ. *WHereas* A. B. *of*, &c. *hath this Day made Oath that on*, &c. *laſt paſt, he ſaw* C. D. *of*, &c. *Shoe-maker, in the Fair or Market of*, &c. *buy of*, &c. *two Hides of Neats-Leather, which Leather was not ſearched and ſealed according to the Statutes; whereby the ſaid* C. D. *has forfeited the Sum of* 5 l. *Theſe are therefore to require you to levy the ſaid Sum of* 5 l. *by Diſtreſs and Sale of the Goods and Chattels of the ſaid* C. D. *and that you do diſpoſe of the ſame according to the Direction of the Acts of Parliament in that Caſe made.* Given, *&c.*

A War-

A Warrant to levy the Forfeiture for reſiſting a Searcher or Sealer in the Execution of his Office.

Eſſex, ſſ. *Whereas* A. B. *of*, &c. *Searcher and Sealer of Leather within the Liberty of*, &c. *hath this Day made Information on Oath before us, that* C. D. *of*, &c. *Tanner, did on*, &c. *laſt paſt, reſiſt and abuſe the ſaid* A. B. *at*, &c. *in the Execution of his Office, inſomuch that he was not able to proceed in his Buſineſs, but was forced thro' violent bad Uſage, to quit the ſame, contrary to the Act of Parliament in that Caſe made and provided: Theſe are therefore to command you to levy the Sum of* 5 l. *on the Goods and Chattels of the ſaid* C. D. *which he hath forfeited by the Offence aforeſaid.* Given, &c. 1 Jac. 1. c. 22.

A Warrant againſt a Shoe-maker for uſing bad Leather.

Eſſex, ſſ. *Whereas* A. B. *of*, &c. *Gent. hath this Day given Information to us, that* C. D. *of*, &c. *Shoe-maker, lately ſold him one Pair of Boots and two Pair of Shoes, which are not only ſlightly ſewed, but alſo made of bad and inſufficient Leather, whereby they have done the ſaid* A. B. *little or no Service, to the Deceit of the ſaid* A. B. *and contrary to Law: Theſe are therefore in his Majeſty's Name to command you to levy the Sum of* 3 s. 4 d. *on the Goods and Chattels of the ſaid* C. D. *by Diſtreſs and Sale thereof, which he hath forfeited by the Offence aforeſaid.* Given, &c. 1 Jac. 1. c. 22.

A Warrant to levy the Forfeiture of a *Tanner*, for uſing a private *Tan-yard* to defraud the King of his Duty.

Eſſex, ſſ. *Whereas* A. B. *of*, &c. *Officer for charging the Duty on Leather, has this Day made Oath before us, that* C. D. *of*, &c. Tanner, *hath lately made Uſe of a private Tan-yard, for Tanning of Leather, in the Pariſh of*, &c. *without giving any Notice of the ſaid Tan-yard, or making any Entry of the Hides there tanned, to the Defrauding the King of his Duty for ſuch Leather; whereby he is liable to the Penalty of* 20 l. *But as we have Power to mitigate ſuch Penalty, ſo as the ſame* 9 Annæ. c. 8.

be not reduced to leſs than one fourth Part of the ſaid Penalty, beſides the Coſts and Charges of the Proſecution; we do hereby mitigate the ſaid Sum of 20 l. *to the Sum of* 7 l. *And theſe are in his Majeſty's Name, to command you to levy the ſaid Sum of* 7 l. *which he hath forfeited by the Offence aforeſaid, by Diſtreſs and Sale of the Goods and Chattels of the ſaid* C. D. *and that you do pay the ſame to the ſaid* A. B. *as the Proſecutor.* Given, &c.

A Warrant to levy the 50 *l.* or the mitigated Penalty, for carrying away from the *Tanner's* Yard Skins before they were mark'd by the proper Officer.

9 Annæ c. 8.

Eſſex, ff. *WHereas Complaint hath been made unto us* A. B. *and* C. D. *two of his Majeſty's Juſtices of Peace for the ſaid County, and both of us reſiding near the Place where the Offence herein after-mentioned was committed, that* L. M. *of,* &c. *did on the* 30th *Day of this Inſtant* July * *carry away from the Tan-yard of* R. C. *in,* &c. *two Calve-Skins before the ſame were marked by the proper Officer, for that Purpoſe appointed, and contrary to the Statute in that Caſe made and provided: We did therefore command the ſaid* L. M. *to appear before us on the Day of the Date hereof, at the Houſe of* P. S. *in* M. &c. *commonly known by the Name of the* Red-Lion, *where he did appear accordingly: And we, upon Examination of Witneſſes and due Proof thereof made on Oath, did then and there adjudge the ſaid* L. M. *to be guilty of and in the Premiſſes, by Reaſon whereof he hath forfeited* 50 l. *We do therefore require you forthwith to levy the Sum of* 25 l. *upon the Goods and Chattels of the ſaid* L. M. *to which laſt Sum we have mitigated the aforeſaid Forfeiture of* 50 l. *And if the Goods ſo taken ſhall not be redeemed within ſix Days afterwards, that then you ſell the ſame, and pay one Moiety of the* 25 l. *to the King, and the other Moiety to* R. B. *who firſt informed us of the ſaid Offence, deducting* 5 l. *for his Charges in the Proſecution hereof.* Given, &c.

* Or as the Offence is.

Lewdneſs.

Leet.

Leet.

THIS is a Court of Record, and derived out of the Sheriff's Tourn for the Eaſe of the People within particular diſtricts, and that they might not be at the Charge or Loſs of Time to travel to the Sheriff's Tourn. It was therefore granted by the King, to particular Lords, who were to view the Tenants and Reſiants at certain Times in their Manors; and from hence 'tis called *Curia viſus franci plegii.* Before the Conqueſt.

Before the Inſtitution of the Leet, every Freeman when he was twelve Years old, was bound to take the Oath of Allegiance in the Tourn; and after the Leet was eſtabliſhed, then he was bound to take it within that particular Precinct; and if he could not then find Pledges for his Truth to the King and the People, he was to be committed till he could. Before Leets every Man ſworn in the Sheriff's Tourn.

Theſe Pledges, or free Pledges, conſiſted of ten Families, the Maſters whereof where bound for one another and their Families, that each Perſon therein ſhould ſtand to the Law; and if he was not to be found, that then they ſhould anſwer for any Injury he had done. Frank-Pledges what.

And theſe were the Pledges the Lord or his Steward were to view in the Leet, which comprehended thoſe ten Families and no more; but afterwards the Authority of the Leet was enlarged by many Statutes. To conſiſt of ten Families.

A Steward of a Leet cannot grant Surety of the Peace, unleſs by Preſcription; but he may commit thoſe who make an Affray before him in the Execution of his Office, or bind them to the Peace or Good Behaviour. Steward may commit for an Affray.

He may take a Preſentment of an Offence againſt the Peace.

In every Leet there ought to be a Pillory and Tumbrel, or the Lord of the Leet ſhall be fined to the King.

Steward ought to give the Stat. of 1 *Eliz. c.* 17. concerning Fiſh, in Charge, or forfeits 40 *s.* between the King and Proſecutor.

He cannot amerce for any thing but publick Nuſances, nor for particular Treſpaſs either againſt the Lord or any other Perſon; for if he doth, an Action lies againſt him. 1 *Saund.* 135. *Raym.* 160. Stewards cannot amerce for any thing but publick Nuſances.

Letter. See Libel and Poſt-Letters.

Lewdneſs.

Publick Bawdy-Houſes ſuppreſs'd.

IN former Times there were eighteen Bawdy-Houſes, which were publickly known and allowed, on the Bank-ſide in *Southwark*. King *Hen.* VII reduced the Number to twelve; and his Son *Hen.* VIII, in the 37th Year of his Reign, by his Proclamation wholly ſuppreſſed them, ſince when they have ever continued ſo.

Conſtable on Information of lewd People being together, may carry 'em before a Juſtice.

And now at this Day, any Conſtable, upon Information that a Man and a Woman are about to commit Fornication, or Adultery; or that they are gone to any Lewd Houſe, may, if he find them there together, carry them before a Juſtice of the Peace, without any Warrant; and the Juſtice may bind them to the good Behaviour. *Dalt.* 214.

Popham 208.

If a Man is indicted for frequenting a Bawdy-houſe, it muſt appear that he did know it to be ſuch a Houſe; and it muſt be expreſly mention'd in the Indictment, that 'tis a Bawdy-Houſe, and not that 'tis only ſuſpected to be ſuch.

The Court agreed, that if a Lodger, who has only a ſingle Room, will therewith accommodate lewd People to perpetrate acts of Uncleanneſs, ſhe may be indicted for keeping a Bawdy-houſe, as well as if ſhe had the whole Houſe. 1 *Salk.* 382.

Indictment againſt a common Bawd, and Judgment revers'd on a Writ of Error.

Indictment againſt the Defendant, for that ſhe was *communis lena, ac male diſpoſitas perſonas in domibus luſanaribus convenire, & ſcortationes & fornicationes committere pro lucro proprio illicite procuravit:* On Not Guilty pleaded, the Defendant was convicted, but it was revers'd upon a Writ of Error: For tho' an Indictment will lye for keeping a Bawdy-Houſe, it will not lye for being *communis lena*, nor for a Sollicitation of Chaſtity.

Husband not bound to pay Wife's Debts after Separation.

If a Woman and her Husband ſeparate for her Adultery, or any other Cauſe, and ſhe hath a ſeparate Allowance, he who truſts her after publick Notice of the Separation, truſts her upon her own Credit, for the Husband is not anſwerable.

An Indictment for being a Bawd only, not good. 1 *Salk.* 382.

A Conſtable in *London* being informed *A. B.* was at a Houſe committing Adultery with another Man's Wife; he went to the Houſe with ſeveral to aſſiſt, and arreſted him, and carried him to the Compter. *A. B.* brought an Action of falſe Impriſonment, to which the Conſta-

ble pleaded, that in *London* there was a Cuſtom on Information to ſeize ſuch Offenders, &c. In this Caſe *Townſend* declared, That Adultery is a Thing Temporal as well as Spiritual, and againſt the Peace of the Land; and that the committing of Adultery with a Man's Wife, is a greater Breach of the Peace, than entring his Houſe and robbing him: And *Catesby* alſo agreed, that at Common Law it is a Breach of the Peace. *Hill.* 1 *Hen.* 7. *fol.* 6 & 7.

A Woman in *B.* kept a common Bawdy-Houſe, and *A. C.* reſorted thither, and kept Company with lewd Women; the Conſtable with others to aſſiſt him at Midnight, arreſted *A. C.* in the Bawdy-Houſe for a Breach of the Peace. *A. C.* brought an Action of falſe Impriſonment, and the Conſtable pleaded the ſaid Matter in Juſtification; and it was allowed by all the Judges to be a good Juſtification. *Mich.* 13. *Hen.* 7.

M. S. was indicted at the *Old Baily*, for that *carnaliter cognovit A. W.* an Infant under the Age of ten Years; and becauſe upon Evidence to the Jury, it was not proved, that he entred the Child's Body (but the contrary) altho' he very much abus'd her, the Jury wou'd not find him Guilty of the Felony. But by the Advice of Judge *Jones* and Judge *Berkley*, he was indicted of Battery for abuſing the Infant in lying with her, and was convicted and adjudged for this Miſdemeanor, to be committed to Priſon, there to abide during the King's Pleaſure, fined 200 Marks, to ſtand upon the Pillory in *Chancery-Lane* in *Middleſex*, near the Place where the Fact was committed, with a Paper upon his Head ſignifying the Cauſe, and to be bound with able Sureties to the good Behaviour during Life.

Indictment for keeping a Bawdy-Houſe.

JURR', &c. quod T. P. de, &c. die & Anno, &c. & diverſis temporibus antea & poſtea apud L. tenent & cuſtodiunt, occupant & frequentant in domibus ſuis ibidem communia hoſpitia lupan' luxur' & fornication' & permittunt homines & alias perſonas ſuſpectas & non boni geſtus nec fame, cum meretricibus carnaliter incubare, ad magnum nocumentum totius populi Domini Regis ibidem prope commorantium, & in malum exemplum omnium aliorum, in tali caſu delinquen' ac contra pacem, &c.

Liberties and Franchiſes.

Liberties and Franchiſes what.

ARE ſuch which have Return of Writs, and not ſuch which are Counties of themſelves; as *York*, *Briſtol*, &c. not Towns which have Juſtices of Peace by Charter, or Grant of the King, ſo that no other Juſtices meddle there without a concurrent Commiſſion from the King. But a Juſtice of Peace may execute his Authority within any Liberty in his County, not being a County of it ſelf; and it is good. 2 & 3 *P. & M. c.* 18.

Franchiſes are ſometimes put into the King's Hands, ſometimes ſeiſed in his Right till Fine made, ſometimes fore-judged. 9 *Co.* 28. 2.

Franchiſes ſometimes ſeiſed into the King's Hands, and ſometimes fined; as in Dr. Lamb's Caſe in London.

Seiſed for Default of Anſwer, for not being at the Coſt to ſue out a Commiſſion of Gaol-Delivery, for Priſoners whom the Gaoler detains. 9 *Co.* 96. *b.* So detaining Priſoners after the Fees paid.

Liberty ſeiſed for grand Riot, in Cities and Corporations, fined, as it happened in *London*, in the Caſe of the Riot where Dr. *Lamb* was killed, the City was, upon Information in *B. R.* fined a Thouſand Marks. *P.* 8. *Car.* 1.

A Franchiſe within a Hundred, is chargeable for a Robbery with the Hundred. 27 *Eliz.* 13.

Libellers and Libels.

What is a Libel.

A LIBEL (in this Place) ſignifies a ſcandalous Report raiſed and ſpread abroad of another, or otherwiſe unlawfully publiſhed.

In Writing.

And this may be either in Writing or without it; if in Writing, the Making a Copy thereof and Delivering that Copy to another is a Publication; and ſo is Repeating it to others after a Man hath heard the ſame read, or reading it to another, knowing it to be a Libel.

Or without Writing.

If without Writing, then it may be by Pictures or Repreſentations; as to paint a Man like a Fool, or by Sign; as to fix a Gallows, or any other ſhameful and ignominious Sign at the Door of a Perſon. 5 *Rep.* 125.

Authors of Libels, how to be puniſhed.

Authors of Libels may be puniſhed by Indictment, and fin'd, or by an Action on the Caſe, where the Words

will bear an Action. And if it be againſt a private Perſon, it ought to be burn'd or carried to a Magiſtrate; and if it be againſt any Perſon in Office, or Magiſtracy, and much more if it be againſt the Government, it ought to be delivered to ſome Magiſtrate, that the Offender may be found and puniſhed. 5 *Rep.* 59.

A Man may be indicted at the Seſſions for writing a ſcandalous Letter concerning a private Perſon, as it tends to the Breach of the Peace. And if a ſcandalous Letter be directed to the Party himſelf, and not to a third Perſon; this tends to the Breach of the Peace, and may be puniſhed by Indictment or Information; but no Action on the Caſe will lye, becauſe 'tis no Publication. 1 *Lev.* 139. *Moor* 627, 821. *Hob.* 62.

Libel found in a Houſe, Maſter not to be puniſhed.

If a Libel be found in an Houſe, the Maſter or Owner thereof cannot be puniſhed in an Information for compoſing, printing, or publiſhing it; but it is ſaid he may be indicted for having it, and not delivering the ſame to a Magiſtrate. 1 *Vent.* 31.

To libel any private Perſon is an Offence; but to libel a Magiſtrate is a greater; but the greateſt of all is to libel the Government. 1 *Leon.* 287.

Caſe of Libelling private Perſons.

As to private Perſons, if a Man ſhall write libellous Letters, and diſperſe them in the Fields, without ſending any to the Perſon himſelf, this is puniſhable as a Libel, tho' the Matter contained in them be true, as it is not to be juſtified in an Information. But if an Action on the Caſe be commenced for printing and publiſhing a falſe and malicious Libel, the Defendant may juſtify that it was true. *Moor.* 627. *Hob.* 120. *Hob.* 153. *Hardres* 470.

Caſe of Libelling Magiſtrates.

As to Perſons in Office: A Man affirmed that my Lord Chancellor *Bacon* had done Injuſtice, and ſpoke other ſcandalous Words of him; for which he was ſentenced to pay 1000 *l.* Fine; to ride on a Horſe with his Face to the Tail, from the *Fleet* to *Weſtminſter*, with his Crime written on his Head; to acknowledge his Offence in all the Courts at *Weſtminſter*; to ſtand in the Pillory; and that one of his Ears ſhould be cut off at *Weſtminſter*, and the other in *Cheapſide*; and to ſuffer Impriſonment during Life. *Poph.* 135.

Caſe of Libelling the Government.

Information againſt the Defendant for cauſing a ſcandalous Libel to be framed, printed, and publiſhed. Upon Not Guilty pleaded, the Evidence was, That upon Search of the Defendant's Lodgings, by a War-

rant from a Secretary of State, two of the Libels were there found. Adjudged that tho' the Defendant could give no Account how he came by them, yet this was no Crime within the Information, unleſs he had maliciouſly publiſhed them. 1 *Vent.* 31.

A Man was indicted for ſaying that *Campion* was not executed for Treaſon, but for Religion; and that he was as honeſt a Man as *Cranmer*; but the Jury did not find whether the Words were ſpoken *Malitioſe & Seditioſe*, and ſo the Defendant was diſcharged.

A Man may juſtify in an Action on the Caſe for a Libel, but not againſt an Indictment for it. *Hob.* 120. 253. *Moor* 627.

Laughing on hearing a Libel read, no Publication. He who dictates, and he who writes the Libel, are both guilty.

If I hear a Libel read, and only laugh at it, however I may ſeem to approve of it, yet that will not amount to a Publication.

Where one did pronounce, dictate, and repeat the Words, and the other did write them, the Queſtion was, Whether the Writer ſhould be guilty of compoſing and making the Libel? It was inſiſted that he ſhould not; for if he ſhould, then every Man who writes a Libel, muſt make and compoſe it; but adjudged that he who dictates, and he who writes the Libel, are both guilty; becauſe the Writing ſhews an Approbation of the Libel dictated; and they are both Makers of it: For all who concur in an unlawful Act, are guilty. 5 *Mod.* 165.

Written Copy of a known Libel, an Evidence of the Publication of it.

Indictment for compoſing, writing, making, and collecting ſeveral Libels, in one of which it was contain'd *juxta tenorem & effectum ſequent'*. The Defendant was found guilty as to the Writing and Collecting, and not guilty as to the laſt. Adjudged that the Copying a Libel without Authority, is writing a Libel: And he who thus writes is a Contriver of the Libel; and when the written Copy of a known Libel is found upon him, it is an Evidence of the Publication of it.

But if ſuch Publication be not publickly known, then the bare having a Copy is no Publication. That there is a Difference between *tenor* and *effectus*; for if this Indictment had been *juxta effectum ſequent'*, it had been naught; becauſe the Court is to judge of the very Words, and not of that Conſtruction which is made by the Proſecutor: For the Tenor of a Thing is the Tranſcript, and imports the Words themſelves. 2 *Salk.* 417. *Hob.* 62. *Het.* 4. *Moore* 421.

A Man was a Suitor to a rich Widow, and the Defendant wrote a Letter to her, adviſing her not to marry him, for he was a debauched Perſon, and had the Pox, and was not worth a Groat; and that he declared if he married her, then he would allow 50*l.* *per Ann.* to a Whore. This Letter was conveyed to the Widow, but not ſubſcribed by the Defendant; but upon Evidence it appeared to be his Writing. He was fined 200*l.* at Seſſions. *Sid.* 270. *Lev.* 139.

One for a Libel on a private Perſon fined 200*l.* at Seſſions.

One *Jeffs* libelled my Lord *Coke* for the Judgment in *Magdalen College* Caſe, by writing that it was Treaſon, and he a Traitor, and perjured Judge. This he fixed on the Gate of *Weſtminſter Hall*; for which he was ſentenced to ſtand in the Pillory with a Paper, &c. and to be committed till he made his Submiſſion in every Court. He was alſo to find Sureties for his good Behaviour for Life, and to pay 1000*l.* to the King. *Cro. Car.* 175.

One punished for Libelling Lord C. J. Coke.

A Man, who was angry with Judge *Hutton* for his Argument about Ship-Money, came into the Court of Common Pleas, ſitting the Court, and ſaid, I accuſe Mr. *Juſtice Hutton* of High Treaſon; and he was fined 5000*l.* and impriſoned during the King's Pleaſure. *Sid.* 213.

So for Libelling Judge Hutton.

Information for writing a Libel againſt the Government, in which there was a Sentence wherein the Word (nor) was miſtaken for (not); and this being found Specially, it was adjudged that Tenor implies a true Copy, which this was not; becauſe (nor) differs from (not) both in Grammar and Senſe: And no Man can ſwear that the Libel ſet forth in the Information is a true Copy of the written Libel.

Tenor implies a true Copy.

There are two Ways of deſcribing a written Libel, either by the Words or Senſe. The firſt is *cujus tenor ſequitur*, or *quæ ſequuntur in his Anglicanis verbis*, in which the Deſcription is by particular Words; and of which every Word is a Mark: So that if there is any Variance, 'tis fatal. The other Deſcription is by the Senſe; and that is to ſet forth in the Information that the Defendant made a Writing, and therein wrote ſo and ſo, tranſlating it into *Latin*, in which 'tis not material to be very exact in the Words, becauſe the Matter is deſcribed by the Senſe of them.

Two Ways of deſcribing a written Libel.

To ſay of a Juſtice of Peace, that he is not fit to talk Law, is indictable and fineable at Seſſions, as a Libel. 3 *Mod.* 139.

Libellers may be bound to their Good Behaviour.

Libellers (it ſeemeth) may be bound to their Good Behaviour, as Diſturbers of the Peace, whether they be Contrivers, Procurers, or Publiſhers of the Libels; for ſuch Libelling and Defamation tendeth to the Raiſing of Quarrels and Effuſion of Blood, and occaſions Breaches of the Peace. *Dalt.* 294. 9 *Co.* 59. *b.*

So if one, that hath heard it read, repeat any Part, or read it to another knowingly. *Ibid.*

So by a ſcandalous Letter ſubſcribed by his Name, being full of ſlanderous Matter. 12 *Co.* 35.

It is all one if Libel be true or falſe.

And it is not material whether the Libel be true or falſe, the Party ſcandalized living or dead, of good or ill Name. *Ibid.*

Libels cognizable before Juſtices of Peace.

S. publiſhed a libellous Letter, ſcandalous to *M.* before a Woman *M.* intended to marry; for which he was indicted before the Juſtices of Peace at *Guild-Hall*, *London*, and Judgment againſt him. *S.* brought a Writ of Error, and two Errors were aſſigned. 1. That it was but a private Letter and not puniſhable by Indictment. 2. If it be, yet not before Juſtices of Peace, but before Commiſſioners of Oyer and Terminer, who have Words in their Commiſſion *de prolationibus verborum.* Tho' *Tyſden*, *Kelynge*, and *Wyndham*, held that he was indictable, becauſe it tended to a Breach of the Peace, and before Juſtices of Peace, as well as Juſtices of Oyer and Terminer. *Mich.* 16. *Car.* 2. *B. R.* The *King* againſt *Summers* and *Summers.* 1 *Sid.* 270.

Caſe of a Libel againſt Earl of Warwick's Brother.

S. writ a ſcandalous Letter to *Hatton Rich*, Brother to the Earl of *Warwick*, who was indebted to him 300*l.* after *Rich* had obtained a Protection, and at laſt taken the King's Bench Priſon. In which Letter were theſe Words, [That if he had any Honeſty, Civility, Sobriety, or Humanity, he would not deal ſo by him; and that he would one Day be damn'd and be in Hell for the Cheating,] or Words to the like Effect; and quoted ſeveral Places of Scripture to make good the Allegations. The Court of *B. R.* judged this Letter Scandalous, being provocative, and tending to the Breach of the Peace; and *S.* was fined 40 Marks. *Mich.* 22 *Car.* 2. *B. R.* *Raym. Rep.* 28. *Rex* verſus *Saunders.*

Indict-

Indictment for a Libel againſt a Juſtice of Peace.

Eſſex, ſſ. JURR', &c. quod cum 4 die Julii Anno Regni, &c. apud C. in Com' præd' Gaola dicti Dom' Regis ad generalem Quarterial' Seſſion' pacis tent' adtunc & ibidem coram A. B. ac D. E. Mil' & Bar' & aliis ſociis ſuis Juſtic' dicti D'ni Regis ad pacem in Com' præd' conſervand' necnon ad diverſas felonias tranſgreſſiones & alia malefacta in eodem perpetrat' audiend' & terminand' aſſign' de quibuſdam priſonariis in eadem Gaola adtunc & ibid' indictat' rite & ſecundum leges & conſ' hujus regni Angl' deliberat' fuit quidam tamem C. D. nuper de L. in Com' præd' Yeoman præmiſſorum non ignarus ſed machinans & intendens præd' Juſtic' in magnu' ſcandalu' & infamiam inducere poſtea ſcil' primo die Auguſti Anno Regni, &c. apud L. præd' in Com' præd' malitioſe quendam famoſum libellum (Anglice' vocat' a Libel) in ſcriptis ad defamation' Juſtic' præd' edidit & publicavit continen' inter alia hæc falſa & ſcandaloſa verba ſequen' ſcilicet——— ubi revera, &c. contra pacem dicti Dom' Regis Coron' & dignitat' ſuas necnon contra formam * Statut' in hujuſmodi caſu edit' & provis'.

* 1 W. c. 24.

Libraries Parochial.

SEveral Parochial Libraries having been erected by charitable Contributions, Care has been taken by a late Act of Parliament of 7th of Q. *Anne*, *cap.* 14. to preſerve the ſame.

By which Act every Incumbent, before he ſhall be permitted to uſe ſuch Library, muſt enter into a Bond, to be approved by the proper Ordinary, conditioned for the Preſervation of the Library; and to obſerve the Rules and Orders belonging to the ſame.

Incumbent to enter into Bond.

And if any Book ſhall be taken away or detained, the Incumbent, or any other Perſon, may bring an Action of *Trover* in the Name of the proper Ordinary, and ſhall recover treble Damages with full Coſts; which Damages ſhall be applied to the Uſe of the Library.

If a Book taken away, Ordinary may bring Action.

The

May enquire in his Viſitation.

The ſaid Ordinary, or his Commiſſary, or his Official, or the Archdeacon, or his Official, or Surrogate, (if the ſaid Archdeacon is not Incumbent of the Place where the Library is) may enquire in their Viſitations, of the State of ſuch Library, and the Ordinary may appoint any Perſon to view it.

Incumbent muſt make a Catalogue within ſix Months.

And where a Library is appropriated to the Uſe of the Incumbent, he muſt within ſix Months after his Induction, make a new Catalogue of all Books in the Library, and muſt ſign the ſame, acknowledging the Poſſeſſion of ſuch Books; which Catalogue he muſt deliver to the proper Ordinary, within the Time aforeſaid.

On any Vacancy, Library muſt be lock'd up.

And upon any Vacancy, the Library muſt be lock'd up by the Churchwardens, or by a Perſon appointed by the proper Ordinary, or by the Archdeacon; unleſs the Place where ſuch Library is kept ſhall be uſed for the Veſtry, or otherwiſe for Diſpatch of Buſineſs; and after that is done, the Place is to be locked up.

A Book to be kept for Benefactions.

And likewiſe a Book ſhall be kept in the Library for the entring of all Benefactions, which the Incumbent is to ſee fairly entred; and the Ordinary is to make proper Rules and Orders, but not contrary to the Order of the Donor, which ſhall be entred in the ſaid Book.

The Books not alienable without Conſent of, &c.

None of the Books ſhall be alienable, without the Conſent of the Ordinary; and then only when there is a Duplicate of ſuch Book. And if any Book is taken away or loſt, a Juſtice of Peace may grant his Warrant to ſearch for the ſame; and if 'tis found, the Juſtice ſhall immediately order it to be reſtored to the ſaid Library.

A Warrant to ſearch, &c.

Eſſex, ſſ. *WHereas Complaint hath been made before me, by* A. B. *Rector of* C. *in the ſaid County, that a Book called,* Hooker's Eccleſiaſtical Polity, *was lately taken out of the Library erected in the Pariſh of* C. *aforeſaid, and appropriated to the Uſe of the Miniſter there: Theſe are therefore to require you to ſearch diligently in all Places where you and the ſaid* A. B. *ſhall ſuſpect the ſame to be: And in Caſe the ſame ſhall be found, that then you immediately cauſe the ſame to be reſtored to the ſaid Library,* &c.

Licenſes. See Ale-houſes and Badgers.

Licenſes for Badgers, Drovers, &c. are to be granted in open Quarter-Seſſions, and be dated the Day of the Seſſions, and muſt be ſealed by three Juſtices of the Peace (one to be of the *Quorum*) under Penalty of 5*l.* And the Seſſions muſt take Bond that the Perſon licenſed ſhall not foreſtal. The Recognizance coſts 4*d.* and the Licenſe 1*s.* which ſhall not endure above a Year, unleſs the ſame be yearly renewed. 3 & 4 *Edw.* 6. *c.* 21. 5 & 6 *Edw.* 6. *c.* 14. 5 *Eliz. c.* 12. 39 *Eliz. c.* 4. 1 *Jac.* 1. *c.* 25.

Licenes granted in open Q. Seſſions.

A Woman can have no Licence; and thoſe Men who have Licenſe, muſt ſell their Goods themſelves, and not by their Servants. And without a Licence Perſons muſt not buy Corn but in the Markets.

Badgers muſt ſell their Goods themſelves.

Two Juſtices may Licenſe poor diſeaſed Perſons to travel to the *Bath* for Remedies, ſo as they are provided of Relief in their Travel, and do not beg. 39 *Eliz. c.* 4. *Dalt.* 209. 1 *Jac.* 1. *c.* 25. For I do not find that any one or more Juſtices of Peace may or can in any other Caſe licenſe a Man to beg or ask Relief at all, but only may make a Teſtimonial or Licenſe in the two following Caſes; *viz.* 1. To ſuch as ſuffer Shipwrack; and 2. To Soldiers or Mariners coming from the Seas, to paſs from Place to Place. And in theſe two Caſes only, the Law tolerateth them to ask and receive neceſſary Relief, as aforeſaid.

Two Juſtices may licenſe poor diſeaſed Perſons to go to Bath, but not to beg.

Likewiſe poor Priſoners delivered out of Gaols, may in no wiſe beg, by 39 *Eliz. c.* 4. *Dalt.* 209.

Seſſions may inquire of, and determine the Licences for Badgers, &c. which may be granted in open Seſſions. A Licenſe as before may be granted to Drovers of Cattle, to buy and ſell again by the ſame Statute.

A Preſentment, Bill or Information againſt Drovers or Badgers, on 5 *Eliz. c.* 12. on Examination of two Witneſſes, ſhall be as if he had been indicted by twelve. *Crompt.* 125. *Lamb. cap.* 19. *pag.* 601. 5 *Eliz. cap.* 12.

Linen Cloth.

IF any Perſon ſhall uſe, or cauſe to be uſed any Deceit by ſtretching, or otherwiſe impairing Linen Cloth, ſo as to damage the Cloth, he ſhall forfeit the Cloth, and ſuffer one Month's Impriſonment at leaſt, and ſhall pay ſuch Fine as three Juſtices (*Quor.* 1.) ſhall aſſeſs, who ſhall have Power to hear and determine Offences at Quarter-Seſſions. 1 *Eliz. c.* 12.

10 Ann. c. 21. & 12 Ann. c. 20.

Linen Cloth made in *Scotland*, to be of well-ſorted Yarn equally wrought, and fine, from one End of the Piece to the other, and made by the Standard Yard-wand; and all St. *Johnſton's*, and other plain, brown and green Cloth made for whitening, ſhall be one Yard and Nail, or three Quarters and a Nail broad, that when whited, it may be a full Yard, or full three Quarters broad; and the whole Piece in Length 84 Yards, half Piece 42 Yards, *&c.* that ſo when whited, it may be 80, or 40 Yards, *&c.* And all other Sorts of plain Cloth, a full Yard, or full three Quarters in Breadth, and in Length 40 Yards the Piece, 20 Yards half Piece, *&c.* See Meaſures appointed for Linen Checks, ſtriped Linen Neckcloths, Ticken, *&c.* Any Perſon making Linen Cloth in *Scotland* contrary to this Act, being convicted thereof by Oath of Overſeer or Searcher, or two Witneſſes, ſhall forfeit for every Inch leſs than Meaſure in Breadth, and every Yard leſs in Length, 5*s.* and for every Piece not made of well-ſorted Yarn, *&c.* 5*s.* Any Perſon buying, or expoſing to Sale Linen Cloth not made, *&c.* according to this Statute, ſhall forfeit for each Piece 5*s.* Conviction in ſix Months before one Juſtice or chief Magiſtrate of this City, *&c.* On Refuſal, Diſtreſs and Sale; for Want, to be ſent to the Houſe of Correction ſo long as Juſtice ſhall think fit, not exceeding twelve Months; Penalties to the Poor and Informer. Any Perſon counterfeiting a Stamp, forfeits 50 *l.* or a Year's Impriſonment. Selling Linen Cloth, *&c.* before ſtamped, or exporting it before ſtamped, ſuch Perſon ſhall forfeit 5*s.* a Piece for every Piece. No Stamp-Maſter for himſelf, or any other, ſhall buy, or diſpoſe of Linen Cloth, or ſtamp any, not made as the Act directs, on Forfeiture of 5*s.* a Piece, and to loſe his Office for the future. Making uſe of Lime, or Pidgeons Dung for whitening or bleaching Linen Cloth in *Scotland*, forfeit 20*s.* a Piece, on Conviction of two Witneſſes,

or

or Confeſſion, to be levied and diſpoſed, as aforeſaid. 10 *Ann. c.* 21. & 12 *Ann. c.* 20.

What Meaſures to ſell by in Scotland.

By Stat. 13 G. 1. 'Tis enacted, that no Perſon in *Scotland* ſhall vend any Lintſeed or Hempſeed, by any other Meaſure than the *Linlithgow* Meaſure ſtreaked, and the Fractions thereof, under the Penalty of forfeiting the Meaſure uſed by him, and 40*s.* Sterling.

No Perſon ſhall ſell or import into *Scotland* any Linen Yarn, but ſuch as is made up into Cuts and Heſps, or Hanks, each Heſp or Hank conſiſting of 12 Cuts, and each Cut containing 120 Threads exactly numbred.

Juſtice, &c. may enter and ſearch, &c.

Any Juſtice or Magiſtrate, or any Perſon lawfully authorized may enter into any Houſe, the Doors being open, at all Times of the Day; and if any Reels be there found, other than two Yards and half, or 90 Inches in Circumference, the ſame ſhall be carried before a Juſtice or Magiſtrate, who is to break, burn or deſtroy them.

Penalty of Weaver not doing his Duty, &c.

If any Weaver ſhall not weave any Linen Yarn delivered to him into ſuch Cloth, and within ſuch Time, and in ſuch Manner as was contracted for, or ſhall waſte, imbezil or damnify any Yarn delivered him, he ſhall make good the Party's Damage, and alſo pay to the Perſon aggrieved, not exceeding 40*s.* nor leſs than 20*s.*

None to uſe Lime, &c. in bleaching, &c.

No Perſon ſhall uſe Lime, Pidgeons Dung, or Soap Dregs, for bleaching Linen or Yarn, on Forfeiture of the Linen or Yarn, and 5*l.* Sterling to the Informer; and if the Linen or Yarn ſo whitened ſhall not be found, the Juſtice or Magiſtrate ſhall ſet a further Fine on the Offender, not exceeding 5*l.* to be levied, together with the former 5*l.* as hereafter is directed; and the Offender ſhall alſo be incapable to bleach or whiten Cloth or Yarn for two Years after ſuch Conviction.

Juſtices may ſummon Bleacher, &c.

One or more Juſtices, or any Magiſtrate within a Borough, may ſummon the Servant of any Bleacher or Dealer in Hempſeed or Lintſeed, or any other Perſon, and examine him on his Oath what he knows of his Maſter's or other Perſons uſing Lime, Pigeons Dung, or Soap Dregs in bleaching of Linen or Yarn, or other Breach of this Act, for three Months immediately preceding ſuch Examination. And if ſuch Perſon ſhall refuſe to appear on Summons, the Juſtice may iſſue his Warrant to bring him before him; and if he refuſe to be examined, or anſwer on Oath to the Purpoſe, the Juſtice or Magiſtrate ſhall commit him to the adjacent

adjacent Gaol or Tolbooth, there to remain 'till he ſubmit to be examined, the Perſon deſiring ſuch Oath to be tendred to ſuch Servant or Perſon, firſt making Oath, if required, that he believes the Perſon, whom he deſires to be examined on Oath, can diſcover ſome Breach of this Act; but no Servant or Perſon ſhall be liable to any Puniſhment for any Thing relating to the Crime, which on Examination he ſhall diſcover.

King may appoint Twenty-one Truſtees for Linen Manufactures in Scotland.

His Majeſty, by Letters Patent under the Great Seal, appointed by the Treaty of Union to be kept in *Scotland*, may appoint any Number of Perſons reſiant in *Scotland*, not exceeding Twenty-one, to be Truſtees for overſeeing the Linen and Hempen Manufactures, with Power to aſſemble at ſuch Places, and to make ſuch Rules for the Improvement of the ſaid Manufactures, and for preventing Abuſes therein, as they ſhall think expedient, conſiſtent with the Intent of this Act, and the Laws of the Realm.

All Dealers in Linen muſt carry it to the Lapper, &c.

All Dealers in Linen, before they expoſe to Sale any Cloth (if the ſame be white) ſhall carry it in the Waterfold of a Yard or Half Yard in Length, to the Lapper or Stamp-maſter, there to be marked, lapped up, and ſtamped: And none ſhall expoſe to Sale any Manufacture of Linen Yarn 'till the ſame be brought to the Lapper; and if it be made according to the Rules in the Act preſcribed, he ſhall meaſure, ſtamp, and lap it up within 24 Hours; and if any Lapper ſhall ſtamp any Piece of Cloth not made according to the Rules in this Act preſcribed, or mark a greater Number of Yards than the Piece contains, or of a greater Breadth, or commit any other Offence, he ſhall make good the Damages to the Party who bought the Cloth, on the Credit of the Stamp; and alſo 5 *l.* for every inſufficient Piece of Cloth, and be diſmiſſed from his Office, and rendred incapable of any ſuch Office for the future.

Or forfeit 5 l.

If any Perſon ſhall expoſe to Sale, or pack up for Sale, or in Order to be ſent by Land or Water, or enter for Exportation any Linen not ſtamped and marked, he ſhall forfeit 5 *l.* for each Piece, to be levied as hereafter-mentioned.

And the Buyer 5 l.

And the Buyer of ſuch Linen Cloth not ſtamp'd ſhall forfeit 5 *l.* to the Informer, to be levied in the ſame manner as the Penalties on Perſons ſelling Linen Cloth not duly ſtamped.

The Perſons appointed by the Truſtees, or by Warrant of a Juſtice or Magiſtrate, may ſearch in the Day-

Day-Time, all Warehouſes or other Places, and open any Packs; and if any Pieces be found not ſtamped, they may ſeize and bring them before the next Juſtice or Magiſtrate, who are to declare them to be forfeited to the Seizor, and to impoſe a Fine on the Owners of the Warehouſe, &c. where ſuch Linen ſhall be found, and the Perſons who packed it up, not exceeding 5 *l.* Sterling, for the Uſe of the Informer. Juſticesmay ſearch and open Packs, &c.

If any Perſon ſhall counterfeit any Seal or Stamp, being thereof convicted before the Court of Juſticiary at *Edinburgh*, or in the Circuits, he ſhall incur the ſame Pains as Perſons, by the Law of *Scotland* convicted of Forgery ſuffer. Penalty of counterfeiting Stamps.

Every Trader and Weaver of Linen Manufacture may weave his Name, or fix ſome known Mark in any Piece of Linen by him made; and if any other ſhall counterfeit ſuch Mark, on Conviction on the Oath of one or more Credible Witneſſes, he ſhall forfeit 100 *l.* to the Perſon whoſe Mark ſhall be counterfeited. Weaver may fix his Mark, &c.

All Offences againſt this Act (except the Counterfeiting the Marks of private Dealers) ſhall be determin'd by one or more Juſtices, or any Magiſtrate within a Borough, who on Complaint, ſhall on Examination of Witneſſes on Oath adjudge the ſame, and iſſue his or their Warrant to the Conſtables of the Place, requiring them to diſtrain, according to the Laws of *Scotland*, ſo much of the Offender's Goods as will ſatisfy the Penalties, &c. And if no Diſtreſs can be found, the Juſtices may commit the Offender to the Houſe of Correction, or next Gaol, for ſo long Time as they ſhall think Proper, not exceeding one Year in the Whole. Where Offences are to be determin'd, &c.

If any find himſelf aggrieved by the Determination of the Juſtices, he may immediately after Sentence enter his Appeal, in the Preſence of the Juſtices, from the ſaid Sentence to the next Quarter-Seſſions; of which Appeal the Juſtices are to make a Minute, and ſtop Execution till the End of the next Quarter-Seſſions; and the Juſtices at their Quarter-Seſſions are to proceed upon, and finally determine the ſaid Appeal; and if they give Judgment againſt the Appellant, to decree him to pay the full Coſts of the Appeal, and to pay a Fine not exceeding double the Penalty, for which the orignal Sentence was given.

By Stat. 4. *G.* 2. If any Maker of Sail-Cloth in *Great Britain*, ſhall expoſe to Sale any Piece or Pieces of Sail-Cloth, without being ſtamp'd at the End of every Piece of Sail-Cloth with a Stamp, containing the Name and Place of Abode of ſuch Maker in plain All Makers of Sail-Cloth muſt ſtamp it, &c.

plain diſtinct Letters and Words at Length, being lawfully convicted on the Oath of one or more Witneſſes, before one or more Juſtices of Peace for the County, City, or Town where the Offence ſhall be committed, ſhall forfeit 5 *l.* for every Piece of Sail-Cloth ſold or expoſed to Sale not being ſtamp'd as aforeſaid; and if any Perſon ſhall wilfully or maliciouſly cut off, deſtroy, or obliterate any Stamp ſo affix'd, or ſhall affix, or make uſe of any Stamp, on which ſhall be marked the Name and Place of Abode of any other Perſon, and not his or their real Name or Names, and Place or Places of Abode; ſuch Perſon being convicted of any of the Offences aforeſaid, ſhall for every ſuch Offence forfeit 10 *l.* both which laſt mentioned Forfeitures ſhall be levied by Diſtreſs and Sale of the Offender's Goods and Chattels, by Warrant under the Hands and Seals of two or more Juſtices for the County, Riding, *&c.* where the Offence ſhall be committed, and ſhall go to the Informer.

Lodgers.

Lodgers not to Imbezil Goods out of their Lodgings.

IF any Lodger ſhall take away, with an Intent to ſteal, imbezil or purloin, any Chattel, Bedding or Furniture, which by Contract or Agreement, he or they are to uſe with ſuch Lodging; it ſhall be adjudged Larceny and Felony; and the Offender ſhall ſuffer as in caſe of Felony. 3 & 4 *W.* & *M. cap.* 9. continued 4 & 5 *W.* & *M. cap.* 24. made perpetual by 6 & 7 *W.* 3. *cap.* 14. *Vide* Felony.

Loom-Lace. See Bone-Lace.
Low-bells, Lurcher. See Game.

Lord's Day, or Sunday.

The ſeventh Day of the Week changed into the firſt.

IT is very meet and reaſonable, that ſome Part of our Time in this World ſhould be ſet apart to be employed in taking Care for the next; God in the 4th Commandment to the *Jews*, appointed every ſeventh Day to be the Sabbath, or the Day of Reſt both for Man and Beaſt, which was kept by the *Jews* with ſo much Superſtition, that it often expoſed them to very great

great and grievous Calamities. After the Coming of our Saviour, who was Lord of the Sabbath, the Sabbath was changed, contrary to the expreſs Letter of the fourth Commandment, from the Seventh to the firſt Day of the Week, in Commemoration of our Saviour's Reſurrection, as the *Jewiſh* Sabbath had been in Memory of the Creation. How this Alteration was made does, no where (that I know of) appear in Scripture, tho' it is pretty plain that it was religiouſly obſerved both by the Apoſtles themſelves, and the Primitive Chriſtians, almoſt from the very Time of our Lord's Reſurrection; and continues ſtill to be kept holy by all who profeſs Faith in Chriſt, except a few Judaizing Chriſtians who place more Religion in keeping holy the Sabbath-Day, than in doing Works of Juſtice and Mercy.

However, as it is objected to us by Foreigners, that there is no Place where there is ſo little outward Profeſſion of Religion as in *England*; ſo muſt it at the ſame Time be confeſſed, that the Lord's Day is no where ſo ſtrictly and nicely kept as in *Great Britain*; and to that End, ſeveral Acts of Parliament have been made for the ſtrict Obſervation thereof, which may be divided under three Heads.

1. For repairing to Divine Service.
2. Prohibiting the Exerciſe of any Trade or Calling.
3. Prohibiting the Profaning the Lord's Day by Sports and Paſtimes.

1*ſt*, Every one on this Day (not having a reaſonable Excuſe) muſt diligently reſort to ſome publick Place where the Service of God is performed, and ſuch as repair not to Church, &c. on *Sundays* and Holy-days, being convicted by one Witneſs, forfeit each of them 12 *d.* for every Default, to be levied by Diſtreſs; and for want of Diſtreſs, to be committed till the ſame be paid. 1 *Eliz. cap.* 2. 23 *Eliz. cap.* 6. 3 *Jac.* 1. *cap.* 4. 29 *Eliz. cap.* 6. 35 *Eliz. cap.* 1. 13 & 14 *Car.* 2. *cap.* 4.

Every one who abſents from Church for a Month, forfeits 20 *l.* and if he be abſenting for twelve Months or more, 20 *l.* for every Month, and Forfeiture of two Parts in three of his or her Eſtate.

N. B. Theſe Acts extend not now to Proteſtant Diſſenters qualified by Stat. 1 *W.* & *M. cap.* 18.

If any one come not to the Sacrament of the Lord's Supper once a Year, his or her Name and Surname muſt

Not coming to the Sacrament, muſt be preſented.

must be presented; 40 *s.* Reward to such as present them. 3 *Ja.* 1. *cap.* 4.

Must not do any Thing in Contempt of the Sacrament.

None shall speak or do any Thing, in Contempt of the most Holy Sacrament, on Penalty, upon his Conviction by the Oaths of two lawful Witnesses, to be bound over by three Justices (*Quorum unus,*) &c. and prosecuted for the same. 1 *Ed.* 6. *cap.* 1.

None to disturb a lawful Preacher.

Whosoever shall disturb any lawful Preacher in his open Sermon, or be procuring or abetting thereunto, or shall rescue any such Offender, shall be committed by any Justice of the County to safe Custody; and within six Days the said committing Justice, with one other Justice, (if the Offender upon Examination shall be found guilty) shall commit him to Gaol, without Bail or Mainprize for three Months, and further to the next Quarter Sessions. 1 *M. cap.* 3.

Prohibiting any Trade or calling.

Shoe-maker not to sell.

2*ly*, Shoe-maker putting Boots or Shoes to Sale, forfeits three Shillings and four Pence, and the Goods. 1 *Ja.* 1. *cap.* 22.

Carriers, &c. not to travel.

Carriers, Drovers, Waggoners travelling on that Day, forfeit Twenty Shillings for every Offence. 3 *Car.* 1. *cap.* 1.

These Forfeitures are recoverable by Distress on a Warrant, or by Bill, or Information, in Sessions, to the Use of the Poor where taken. But tho' the Driving is thro' several Parishes; yet there shall be but one Forfeiture for one Day.

Butchers not to sell on the Lord's Day.

Butchers killing or selling, or causing to be killed or sold, or privy, or consenting to kill or sell Meat on that Day, forfeit 6 *s.* 8 *d.* for every Offence. 3 *Car.* 1 *cap.* 1.

Proof must be by View, Confession of the Party, or two Witnesses upon Oath. Prosecution within six Months after the Offence.

29 Car. 2. None above 14 to do any Work on the Lord's Day.

By 29 *Car.* 2. *cap.* 7. The Conviction is made more easy, and by this Statute publick and private Duties of Piety are enjoyned, all worldly Business is prohibited; and if any Person of the Age of 14 Years, shall on the Lord's Day do any Work or Labour, (except Works of Necessity and Charity) he shall forfeit 5 *s.* for every Offence. 29 *Car.* 2. *cap.* 7.

None to sell any Goods.

Sale on a *Sunday* is not good. 12 *Ed.* 4. *c.* 1. *Dalt.* 138, 139. No Person shall cry, shew forth, or put to Sale any Wares, Fruit, Goods, &c. (except Milk, &c. before nine in the Morning, or after four in the Afternoon) on Pain to forfeit the same. *Ibidem.*

No Drover, Horse-Courser, Waggoner, Butcher, Higler, or any their Servants, shall travel, or come to

their Inns on the Lord's Day, or forfeit 20 *s.* for every Offence. *Ibidem.*

No Perſon ſhall uſe, or travel upon the Lord's Day, with any Boat, Wherry, Lighter or Barge, except allowed by one Juſtice of the Peace ſo to do, or forfeit 5 *s.* for every Offence. *Ibidem.* Or travel without Licenſe.

Conviction muſt be before any Juſtice of the County, *&c.* or chief Officer, by View, Confeſſion, or Proof by one Witneſs; who ſhall give Warrant to the Conſtables, *&c.* to ſeize and ſell the Goods ſhewed, *&c.* and to levy the Forfeiture by Diſtreſs, or for Want thereof, put the Party into the Stocks for two Hours. *Ibidem.*

The Juſtices, *&c.* may reward the Informer out of the Forfeitures, not exceeding one third Part, *Ibidem.* Juſtices may reward Informer.

This Act extends not to dreſſing Meats in Inns, Cooks Shops, or Victualling-Houſes. *Ibid. Sect.* 3. May dreſs Meat in Inns, &c.

Every Perſon to be impeached hereupon, muſt be preſented within ten Days after the Offence. *Ibidem.* Proſecution in ten Days.

If any Perſon travelling on a *Sunday*, be robbed, the Hundred ſhall not be chargeable to him; but in Default of freſh Suit, they ſhall be chargeable to the King, for as much as might have been recovered againſt them by him. *Ibidem.*

If any Perſon on the *Sunday* ſerve or execute, or cauſe, *&c.* any Writ, Proceſs, Warrant, Order, Judgment, *&c.* (except in caſe of Treaſon, Felony, or Breach of the Peace) ſuch Service ſhall be void, and the Party liable to anſwer Damages, as if no Writ had ever been made. *Ibidem.* No Proceſs to be ſerved on the Lord's Day.

Commiſſioners for regulating and licenſing Hackney-Coaches, may appoint 175 of thoſe allowed in *London*, to ſtand, ply, and drive on the Lord's Day within the Bills of Mortality; ſo as the whole Number of 700 may be employed ſucceſſively: Others not ſo appointed, forfeit Five Pounds, if they Ply, ſtand, or drive on the Lord's Day. 5 & 6 *W. & M. cap.* 22. 9 *Ann. cap.* 23. 1 *Geo. cap.* 17. Some Hackney-Coachmen may ply.

But this Clauſe is altered by a Clauſe in Stat. 9 *Ann. c.* 23. whereby all the Hackney-Coachmen are allowed to ply on the Lord's Day notwithſtanding the above-written Clauſe, or any Thing contained in Stat. 29 *Car.* 2.

And by another Statute of 11 & 12 *W.* 3. *cap.* 21, forty Watermen are allowed to ply on every Lord's Day between *Faux-hall* and *Lime-Houſe* for carrying Some Watermen may ply.

Paſſengers croſs the River of *Thames*, at a Penny each. Alſo the Watermen of St. *Margaret's Weſtminſter*, are allowed by the ſame Statute to ply croſs the *Thames* from *Weſtminſter-Bridge* to *Stangate*, and from the *Horſe-Ferry* to *Lambeth-Bridge*, on the Lord's Day; the Monies earned thereby being applied to the Poor decay'd Watermen and their Widows of the ſaid Pariſh, for which the Watermen ſo working ſhall account before any two Juſtices of the ſaid Pariſh.

Prohibiting Sports or Paſtimes. None to meet to uſe Sports or Paſtimes on the Lord's Day.

3*dly*. If any Meet together out of their own Pariſh for any Sports or Paſtimes, they forfeit 3 *s*. 4 *d*. each. 1 *Car*. 1 *cap*. 1.

Proſecution muſt be within a Month, &c.

Proof by one Witneſs before one Juſtice, or Confeſſion of the Party.

Forfeiture is for the Poor of the Pariſh where the Offence is committed, and to be levied by Diſtreſs on a Warrant, &c. and in Default thereof, the Offender is to be put in the Stocks for three Hours.

All the Laws for frequenting Divine Service on the Lord's Day are ſtill in Force, notwithſtanding the Statute of 1 *W*. & *M*. *cap*. 18. unleſs Perſons go to ſome Congregations tolerated by that Act.

Conſtable for arreſting (for good Behaviour) on that Day in the Church-yard, coming from Church, fined. 1 *Cro*. 602. *Prinſon's* Caſe. *Godbolt Pl*. 397.

A Warrant to levy 5 *s*. on thoſe who uſe a Trade, or any worldly Labour, on the Lord's Day.

29 Car. 2. c. 7. One Juſtice, one Witneſs on Oath. Proſecution within ten Days after the Offence.

Eſſex, ſſ. WHereas *it hath been duly proved before me on Oath, that* A. B. *and* C. D. *both of the Pariſh of*, &c. *Barbers*, (or as the Caſe is) *and being of the Age of Fourteen Years and upwards, did exerciſe the Work of their ordinary Callings or Trades at*, &c. *on the 17th Day of this Inſtant* December, *being the Lord's Day; by Reaſon whereof each of them hath forfeited the Sum of* 5 s. *for the Uſe of the Poor of the ſaid Pariſh: Theſe are therefore*, &c.

But Crying and Selling Milk, and Works of Neceſſit and Charity are excepted, and Mackerel are alſo allowed to be ſold by a later Statute. 11 & 12 *W*. 3. *cap*. 24.

A Warrant to levy the Penalty on Persons travelling on the Lord's Day.

Essex, ss. *Whereas it hath been duly proved before me, that* A. B. *of* D. &c. *being a common Carrier* (or as the Case is) *did the 6th Day of* July *last past, being the Lord's Day, travel with his Horses into, and through your said Parish of* D. *contrary to the Statute in that Case made and provided; by Reason whereof he hath forfeited* 20 s. *to the Use of the Poor of the said Parish: These are therefore,* &c. *to command you forthwith to levy the said Sum of* 20 s. *on the Goods and Chattles of the said* A. B. *by Distress and Sale thereof, rendring to him the Overplus, and that you see it employed to the Use of the Poor of your said Parish, as by Law it ought.* Given, &c.

3 Car. 1. c. 1. One Justice (ut prius) but by the Oath of two Witnesses. Prosecution must be within six Months, but by 29 Car. 2. c. 7. ten Days.

A Licence to travel on Horseback on the Lord's Day.

Midd. ss. *Forasmuch as* J. S. *Gent. the Bearer hereof, came before me* L. M. *Knt. one of His Majesty's Justices of the Peace for this County, and hath this Day given me such reasonable Satisfaction, as is required by the Statute in that Behalf made, of his urgent Occasion to travel on Horseback upon the next Lord's Day, from his House in,* &c. *in the Parish of,* &c. *in the County aforesaid, to the Town of* C. *in the County of* D. *These are therefore to certify, that I have, according to the Directions of the Statute aforesaid, given free Licence and Liberty to the said* J. S. *to undertake and perform his said Journey on the next Lord's Day, as aforesaid: Hereby requiring you the said Mayors, Bailiffs, Constables, and other His Majesty's Officers of the Peace above-mentioned, to permit and suffer the said* J. S. *quietly and peaceable to travel on that Day through your several and respective Jurisdictions, Liberties and Precincts, at his Discretion, without any Molestation or Disturbance whatsoever.* Given, &c.

29 Car. 2. c. 7.

A Licence to travel by Water on the Lord's Day.

Midd. ss. *Forasmuch as* J. S. *Esq*; &c. (as next above to) *of his urgent Occasions to travel by Water on the next Lord's Day to* Richmond *in the County of* Surrey, *and to use and employ one or more Watermen with a Boat*

29 Car. 2. c. 7.

or Wherry in his ſaid Voyage: Theſe are therefore to certify that I have (*according*, &c.) *given free Licenſe*, &c. *to the ſaid* J. S. *to undertake*, &c. *on*, &c. *Hereby requiring you the ſaid Mayors*, &c. *to permit*, &c. *the ſaid* J. S. *quietly*, &c. *to perform his ſaid Journey on the next Lord's Day, as aforeſaid, and to uſe and employ any Boat or Wherry with Watermen, at his Diſcretion, without any Moleſtation or Diſturbance whatſoever.* Given, &c.

Lotteries, &c.

8 Geo. 1. cap. 2. If any Perſon erect any Lottery, &c. forfeits 500 l. and to be committed by two Juſtices without Bail, for a whole Year.

EVery Perſon who ſhall erect, ſet up, continue, or keep any Office or Place under the Denomination of Sales of Houſes, Lands, Advowſons, Preſentations to Livings, Plate, Jewels, Ships, Goods, or other Things for the Improvements of ſmall Sums of Money; or ſhall ſell, or expoſe to Sale any Houſes, &c. by way of Lottery, or by Lots, Tickets, Numbers, or Figures; or who ſhall make, print, advertiſe, or publiſh, or cauſe to be made, advertiſed or publiſhed Propoſals or Schemes, for advancing ſmall Sums of Money by ſeveral Perſons, amounting in the whole to large Sums, to be divided among them by the Chances of the Prices in ſome publick Lottery or Lotteries; or ſhall deliver out, or cauſe, or procure to be delivered out, Tickets to Perſons advancing ſuch Sums to intitle them to a Share of the Money ſo advanced, according to ſuch Propoſals or Schemes; or ſhall make print, or publiſh, or cauſe to be made, &c. any Propoſal or Scheme of the like Nature under any Denomination, or Title whatſoever; and ſhall be thereof convicted on the Oath of one or more credible Witneſſes, by two or more Juſtices of the Peace of the County, &c. where ſuch Offence ſhall be committed, or the Offender found; the Perſon ſo convicted, ſhall for every Offence (over and above any former Penalties inflicted by any Act of Parliament made againſt private and unlawful Lotteries) forfeit 500 *l.* one third to the Crown, one other third to the Informer, and the remaining third to the Poor of the Pariſh where the Offence ſhall be committed, to be levied by Diſtreſs and Sale of the Offender's Goods, by Warrant of the Juſtices before whom convicted; and ſhall alſo for every Offence be committed by the ſaid Juſtices to the County Gaol, without Bail or Mainprize, for one whole Year, and from thence till the ſaid

500 *l.*

500 *l.* be fully paid. But Persons aggrieved by the Determination of such Justices, may appeal to the next Quarter-Sessions for the County, *&c.* whose Judgment shall be final.

Adventurers in such Sales and Lotteries, *&c.* shall forfeit double the Sum contributed to the same. 8 *G.* 1. *cap.* 2.

Lunaticks.

TWO Justices may, by their Warrant directed to the Constables, Church-wardens, and Overseers of the Poor of the Parish, or Place where Lunaticks or Mad Persons shall be found, cause such Lunaticks and Persons furiously Mad to be locked up, and if necessary, chained, *&c.* (but not whipped) during their Lunacy, *&c.* and charge their Estate if any) for their Maintenance; (or if none) provided for as the Poor of the Parish. 12 *Ann. cap.* 23.

Lunaticks may be taken up and chained, but not whipped.

But this shall not extend to abridge the King's Prerogative, or the Authority of the Lord Chancellor, touching the Premisses.

Lustrings. See Alamodes.

Maihem.

MAIHEM is a corporal Hurt, whereby the Use of any Member is lost, or any Deformity occasion'd; as if a Limb or Joint is so wounded that the Use thereof is lost or impaired, or an Eye put out, or a Tooth broke, *&c.* But *Staundf.* p. 39. tells us it must be a Fore-tooth broken; for if the Grinders, or Check-Teeth are broken, or even beat out, he says 'tis not a Maihem, *quia latent & non inducunt corporis deformitatem.*

Maihem what.

But my Lord *Coke* tells us, that Castration (*quamvis latet*) is a Maihem, and cites a Case to prove it, *viz.* H. Hull *indictatus fuit de Maihemio eo quod abscidit virilia Johannis Monachi*, whom he caught in Adultery with his Wife. But they tell you that cutting off an Ear is no Maihem, *quia latet.*

Castration is a Maihem.

Sessions cannot increase the Fine.

For this Offence an Indictment will lye at the Sessions; and they might set a Fine for it: But the Justices upon View of the Person maimed, cannot increase the Fine, as the Court of *B. R.* may do.

The Judgment upon a Conviction on an Indictment is a Fine; and upon an Action of Trespass, Damages, &c. and therefore a Recovery in Trespass is a good Bar in an Appeal of Maihem.

In an Appeal of Maihem, Defendant pleaded in Bar, that the Appellant had recovered two Hundred Pounds against him, in an Action of Assault, &c. and averred it was for the same Offence; and this was held a good Plea. *Moor* 668. *Leon.* 518. 4 *Rep.* 45. 5 *H.* 4. *c.* 5.

It is now made Felony without Benefit of Clergy in any, together with all their Counsellors, Aiders, and Abettors, designedly and maliciously to cut off and disable the Tongue, put out the Eye, slit or cut the Nose, or cut off or disable any Limb or Member, with an Intent to maim or disfigure. 22 & 23 *Car.* 2. *c.* 1.

Felony to wound a Privy Counsellor.

By a Statute made 9 *Annæ c.* 16. Any Person unlawfully attempting to kill, or who shall unlawfully strike, assault, or wound a Privy Counsellor, in the Execution of his Office, shall suffer as a Felon without Benefit of Clergy.

An Indictment for Maihem.

Essex, ss. JUR', &c. quod nono die Julii Anno Reg' &c. A. B. de L. in Com' prædo Gen' vi & armis apud L. prædo in & super quendam M. N. adtunc & ibid in pace dicti Dñi Regis existen' insultu' fecit ac cum quodam gladio districto (or as the Case is) ad valentiam quinque solidorum quem dictus A. B. ad tunc & ibid in manu sua dextra tenuit prædat' M. N. malicioſe & illicite percussit ac dextram pollicem prædo M. N. adtunc & ibid amputavit & sic Jur' prædo super sacram' suum dicunt quod prædo A. B. adtunc & ibid eundem M. N. nequiter & * felonice Maihemiavit ad grave nocumentum ipsius M. N. ac contra pacem dicti Dñi Regis Corpon' & Dignitat' suas.

* This Word is requisite, it being Felony at Common Law.

3 Inst. 18. 2 Cro. 101.

Main-

Maintenance.

MAintenance is where any Man giveth or delivereth to another, who is Plaintiff or Defendant in any Action, any thing to ſupport his Cauſe, *pendente lite*, or elſe by Word or Writing, upholds or maintains Quarrels and Suits (not being a Party therein) to the Diſturbance of common Right. Moor 562, 815, 816. What is Maintenance.

Maintainers of Quarrels, and Embracers of Jurors are to be impriſon'd, and bound to the Good Behaviour. 33 *H.* 8. *c.* 10. 37 *H.* 8. *c.* 7. *Lamb.* 440.

To maintain one of the Parties in any Suit in a Court of Juſtice, is Maintenance; but it muſt be *endente placito*; for if Money be given before the Suit begun, it is not Maintenance. 3 *H.* 6. *fol.* 53.

When the Maintainer is to have Part of the Land or Debt when recovered, 'tis Champerty; but where he is to have no Part of it, 'tis Maintenance; when he laboureth for Witneſſes either to appear, or by inſtructing them, or threatning, *&c.* then he is an Embracer, and may be puniſhed at the Suit of the King or Party. Champarty what.

To inform a Jury of his own Head, and not as a Witneſs, is Maintenance. 28 *H.* 6. *fol.* 6.

If one Juryman gives Money to another of the Jury to bring in his Verdict, it is Maintenance. 17 *Edw.* 4. *fol.* 5. Caſes of Maintenance.

If a Perſon of Power or Authority declare publickly in the hearing of many People, that he will ſpend Money for ſuch a Perſon in a Suit, *&c.* 'tis Maintenance. 9 *H.* 7. *fol.* 18.

If one who is no Party to the Suit, write a Letter to a Juryman to appear, 'tis Maintenance; but if 'tis done by one of the Parties to the Suit, 'tis Embracery. Yet my Lord *Hobart* tells us, that where the Defendant was indicted for deſiring a Juror to appear, and to do him reaſonable Favour, or Words to the like Effect; this is not puniſhable, becauſe the Court muſt know the very Words. *Moor* 816. 2 *Leon.* 134. *Hob.* 295.

To aſſiſt a Perſon proſecuting an Indictment, is not Maintenance, becauſe it is for the Advantage of the King; but it is otherwiſe if the Proſecution had been by an Information upon a penal Law, becauſe there a private Perſon is concerned alſo. *Godb.* 169. No Maintenance to aſſiſt a Proſecutor on an Indictment.

Nor for Men to join who have a joint Intereſt.

So where Men have a joint Intereſt, as for Right of Common, &c. there they may join and enter into Bonds to defend that Right againſt the Lord or any other Perſon, and 'tis not Maintenance, becauſe 'tis in Effect but the Intereſt or Suit of one; and as they have this Prejudice by it, that one cannot be a Witneſs for the other, therefore 'tis not unreaſonable that they ſhould all join for their common Advantage.

Shewing the Jury Precedents, Maintenance.

Solliciting the Jury, and ſhewing them Precedents where great Damages were given in a like Caſe, it is Maintenance. 3 *Cro.* 736.

None to buy pretended Titles. Dyer 53.

By Stat. 32 *H.* 8. *c.* 9. If any ſhall buy any pretended Title to Land, unleſs the Seller hath taken the Profits thereof one whole Year next before ſuch Bargain, then both Buyer and Seller are each to forfeit the Value of the Land.

Maintainers forfeit 10*l.* and are puniſhable either by Indictment or Information.

And by the ſame Statute none ſhall unlawfully maintain any Suit or retain any Perſon for Maintenance, embrace Jurors, or ſuborn Witneſſes, on Pain to forfeit for every Offence 10*l.* to be divided between the King and the Proſecutor.

Maintenance is puniſhable either by an Information upon the aforeſaid Statute, or by an Indictment at Common Law.

Caſe of Maintenance.

One was diſſeiſed, and being out of Poſſeſſion, and without making any Entry, ſhe made a Leaſe of the Lands to another, to try the Title againſt the Diſſeiſor; and this was held Maintenance, altho' the Leſſee had no Intereſt by his Leaſe. So likewiſe where one contracted with another to ſell him a Title which he ſuppoſed he had to ſell, and made a Leaſe to a Friend to try the Title, tho' no Action was brought, or any thing done on it. *Moor* 266, 751. 1 *And.* 201. 1 *Leon.* 162.

Indictment in Maintenance muſt ſet forth a Suit, and withal muſt ſay *illicite manutenuit.* Sav. 41, 42. 1 Vent. 302.

Indictment for Maintenance.

It muſt ſet forth a Suit. Savil 42.

Eſſex, ſſ. JURR', &c. quod A. B. de C. in Com' præd' Gen. 3 die Julii Anno Regni, &c. apud C. præd' in Com' præd' quandam actionem que fuit in curia Dom' Regis coram ipſo Rege exiſten' inter quendam L. M. querentem &

N. O.

N. O. Defend' de placito debiti p̄o parte p̄ed̄ L. M. versus p̄efat' N. O. injuste & * illicite manutenuit & sustentavit contra formam Statut' in hujusmodi casu edit' & p̄vis' & in manifestam retardationem & disturbantiam Justitie ac in dicti D'ni Regis contemptum & p̄ed̄ N. O. grave dampnum ac contra pacem Dom' Regis Cor̄on' & Dignitat' suas.

* This being the Word in the Stat. it had been naught if omitted. Savil 41. 1 Vent. 302.

Prosecution on the Statute must be within a Year after the Offence committed.

Mayors. Vide ante p.

IN what Cases Mayors of Corporations may, by Virtue of several Acts of Parliament, act as Justices of Peace, you may read in the former Part of this Treatise, *p.* 22. What we shall add in this Place is,

Mayor must conform to the Church of England.

By Stat. 13 *Car.* 2. *cap.* 1. No Person shall bear any Office of Government in any Corporation, *&c.* that hath not received the Sacrament according to the Church of *England*, within one Year before the Election, and who shall not take the Oath of Allegiance and Supremacy, *&c.*

By this Statute Mayors, *&c.* were likewise to subscribe a Declaration that there lay no Obligation upon them from the Oath commonly called the Solemn League and Covenant; but this is taken away by a late Stat. 5 *Geo.* 1.

By the Statute 10 *Annæ*, Mayors and Officers of Corporations are prohibited from going to Conventicles where the Royal Family shall not be prayed for in expres Words (though the Liturgy of the Church of *England* be used) under the Penalty of 40 *l.*

Ensigns of Magistracy must not be carried to Conventicles.

But this is altered by 5 *Geo.* 1. *cap.* 6. but the Mace, Gown, or other Ensigns of Magistracy, may not be carried to a Conventicle, on Pain of Disability to enjoy any Office, *&c.*

By Statute 9 *Ann. c.* 20. If any Person intrudes into or executes the Office of Mayor, Bailiff, *&c.* a *Quo Warranto* may be brought against the Usurper; and if the Defendant in the *Quo Warranto*, shall be found Guilty of an Usurpation or Intrusion, the Court shall give Judgment of Ouster, fine the Offender, and order the Plaintiff Costs.

And

An annual Officer not to be chose 2 Years successively.

And no Person who hath been or shall be in an Annual Office for one Year, shall be chosen into the same Office the next Year. And obstructing the Choice of a Successor, incurs a Penalty of 100 *l.*

Acts in Pais must have the Seal of the Corporation and the Mayor's Hand.

A Corporation cannot do an Act in *Pais*, without the common Seal and Hand of the Mayor; but they may do an Act upon Record without it. The Mayor of *Thetford*'s Case. *Hill.* 1 *Ann. Salk. Rep.* 192.

For if an Action be brought against a Corporation for a false Return of a *Mandamus*, because it was return'd without the Common Seal, or the Hand of the Mayor, they are estopped, to say it is not their Return; for it is the *Responsio Majoris & Communitatis* upon Record.

Where a Mayor returns a Writ of his own Head.

If a Mayor will return a Writ contrary to the Sense and Consent of the Majority of the Corporation, they cannot avoid it, as he is the Head and Principal; but they may take their Course against him. The Mayor of *Norwich*'s Case. *Salk.* 432.

Case of an Alderman of Rippon.

On a *Mandamus* to the Mayor, Aldermen, and Commonalty of *Rippon*, to restore a Person to the Place of Alderman; it was proved that he declared to the Corporation he would no longer serve in that Office; which Resignation the Corporation accepted and chose another, and held good. But it was held he had Power to wave his Resignation at any Time before they had made an Election. Sir *Jonathan Jennings*'s Case. *Salk.* 433.

Recorder removed for not attending Sessions.

Serjeant *Whitacre* got a *Mandamus* to be restored to his Recordership of *Ipswich*, from which he had been removed for not attending at the Sessions of the Peace, though he had Notice. But the Court held that the Recorder was bound to attend and assist at the Sessions, to direct the Corporation in the Proceedings of Justice; and that Non-attendance is a good Cause of Forfeiture of his Office, which so nearly related to the Administration of Justice. *Salk.* 435.

Town-Clerk may be removable at Pleasure.

Where a Corporation has a Patent to make a Town-Clerk *durante beneplacito* of the Mayor and Aldermen, they may turn him out at their Pleasure. *Sed Quære* of a Recorder. 2 *Keb.* 461. And an Alderman cannot be turn'd out.

Mayor suable where the Corporation is dissolved.

An Obligation being sealed with the Common Seal of a Corporation, which the Mayor signs, the Corporation is afterwards dissolved, the Mayor is suable upon it. 2 *Leon.* 137.

But

But if a Corporation ſeals a Bond, and two of their Members ſign it, and afterwards the Corporation is diſſolved, the particular Perſons are not obliged by it. 1 *Leon.* 237.

But not the particular Members.

If the common Officer of a Corporation does any Thing for their common Uſe, the Town ſhall be anſwerable. 1 *Leon.* Caſe 215.

Corporation anſwerable for what its Officers do.

Every City and Town Corporate may, by a Power inherent to their Conſtitution, make By-Laws for the Government of the Body Politick. 5 *Mod.* 429. And a Body Politick is a Creature of the King, created by Letters Patent. *Hill.* 22 *Car.* 2. *B. R.* The Conſent of the greater Part ſhall be binding; but they may not make any Ordinances to the Diminution of the King's Prerogative, or againſt the Publick Good, under the Penalty of 40 *l.* 19 *H.* 7. *c.* 7.

Every City, &c. has Power of making By-laws.

Actions ariſing out of Corporations, ought not to be tried in Corporation Courts; for their Juriſdiction extends no further than to the Trial of ſuch Actions, the Cauſe whereof ariſes within their Juriſdictions. *Lut.* 1571.

Actions muſt not be brought in Corporations for Things ariſing out of their Juriſdiction.

If a Corporation neglects to chooſe ſuch Officers as they ought to elect by their Charter, or if they make a falſe Election, this may amount to a Forfeiture. And the Charter implies Conditions in Law for them to perform; and by the Non-performance the Charter is forfeited. *Hill.* 21 *Car.* 1. *B. R.*

What amounts to a Forfeiture of Charter.

Malt.

THERE was an Act of Parliament relating to Malt made 17 *Rich.* 2. *c.* 4. and another 3 *Jac.* 1. *c.* 11. but neither of them any way relating to the Office of a Juſtice of Peace; I ſhall forbear ſaying any more of either of them in this Place.

The firſt which gives any Power to Juſtices of Peace is 2 & 3 *Edw.* 6. *cap.* 10. by which it is enacted that none ſhall employ leſs Time in the making and drying of Malt (except in the Months of *June*, *July* and *Auguſt*,) than three Weeks; nor in thoſe Months leſs than ſeventeen Days; nor put to Sale any Malt mingled of good and bad, on Pain to forfeit for every Quarter ſo put to Sale 2 *s.* to be divided between the King and the Proſecutor.

2 & 3 Ed. 6. c. 10.

None

2 & 3 Ed. 6. c. 10.

None ſhall put any Malt to Sale before (by treading, rubbing, and fanning it) he ſhall have conveniently taken out of every Quarter, Half a Peck of Duſt, or more, on Pain to forfeit 20 *s.* for every Quarter otherwiſe ſold, to be divided between the King and the Proſecutor.

Juſtices of Peace in Seſſions, and Stewards in Leets, have Power to hear and determine theſe Offences, as well by Preſentment of twelve Men, as by Information of two Witneſſes.

Bailiffs and Conſtables of Towns and Places where faulty Malt is made and mingled as aforeſaid, have Power to make Search for it; and it being found, (with the Advice of a Juſtice of Peace) to make Sale thereof at their Diſcretions.

None ſhall be puniſhed by this Act who only maketh Malt for his own Proviſion, nor unleſs the Action be proſecuted within one Year.

Stat. 39 Eliz. c. 16. repeal'd.

The Statute 39 *Eliz. c.* 16. Entitled, An Act to reſtrain the exceſſive making of Malt, is repealed *per Stat.* 9 & 10 *W.* 3. *c.* 22.

8 & 9 W. 3. 13 W. 3. 1 Ann. c. 3. 2 Ann. c 9. 3 Ann. c. 3. 4 Ann c. 5. 5 Ann. c. 23. 6 Ann. c. 4. 7 Ann. c. 3. 8 Ann. c. 9 Ann. c. 3. 10 Ann. c. 3. 5 Geo. 1. c. 2. 10 Geo. 1. c. 2. 3 Geo. 2.

By Stat. 8 & 9 *W.* 3. *c.* 21. a Duty of 6 *d. per* Buſhel on Malt, is given to the King, his Heirs and Succeſſors, the Collecting it to be under the Management of the Commiſſioners of Exciſe, from the 20th of *April*, 1697, to the 20th of *April*, 1699.

The Duties on Malt have been prolonged by the ſeveral Acts of Parliament in the Margin; and continued from Time to Time down to this preſent Year 1732.

12 Ann. c. 3. 1 Geo. 1. Sect. 1. 3 Geo. 1. c. 4. 4 Geo. 1. c. 3. 6 Geo. 1. c. 2. 7 Geo. 1. c. 20. 8 Geo. 1. c. 2. 9 Geo. 1. c. 3. 11 Geo. 1. p. 83. 12 Geo. 1. p. 151. 1 Geo. 2. 2 Geo. 2. 4 Geo. 2.

Proceedings may be in Engliſh.

By 6 *Geo.* 1. *c.* 21. All Informations, Complaints and other Proceedings, as well before Commiſſioners of Exciſe, as Juſtices of Peace, ſhall and may be entred and enrolled in the *Engliſh* Tongue.

13 and 14 W. 3. 1 Ann. continued by 7 Ann. c. 3. 9 Ann. c. 3. 12 Ann. c. 3. 1 Geo. 1. c. 4. continued 'till 24 June, 1718.

By 13 and 14 *W.* 3. *c.* 5. If when the Duty is paid, the Malt ſhould be loſt either by Fire or Water, the Collector of the Duty ſhall repay it to him.

But then he muſt prove his Loſs at the Quarter-Seſſions by Oath of two Witneſſes; and the Juſtices in Seſſions muſt certify it under their Hands and Seals; and upon producing the Certificate, the Money muſt be paid.

By

By Stat. 4 *Ann. c.* 5. the like Proof must be made at the next Quarter-Sessions, if the Malt be taken by the Enemy; and upon the like Certificate, the Collector of the Duty is obliged to pay so much to the Proprietor as shall have been by him paid for the Quantity of Malt so proved to be taken.

4 Geo. 1. c. 2. continued to 24 June, 1720. 6 Geo. 1. c. 3. continued to 1721. 1 Ann. c. 3. 7 Ann. c. 3.

Malt lost or damaged must be allowed for.

If any Malt shall be damaged by the Casting away or Sinking of the Vessel, the Justices in Sessions, upon Proof thereof, and of Payment, or Security given for the Duty, may settle the Quantity of the Damage, and what Allowance to make, and certify the same under their Hands and Seals; and the Proprietor producing that Certificate to the Collector of the Duty, he shall repay or allow the Sum therein certified; or in Default thereof, the Proprietor may deduct it out of any subsequent Duty becoming due.

Sufferer must give three Days Notice to Quarter-Sessions.

The Person sustaining any Damage, &c. must, three Days before the next Sessions, give Notice in Writing to the Collector, &c. where such Damage shall happen, of his Intention to apply himself to the Sessions.

6 Geo. 1. c. 21. Malster not to wet his Malt on the Floor.

No Malster, or Maker of Malt for Sale or Exportation, shall wet his Barley on the Floor, or any other Place but in his Cistern, duly entred for that Purpose, at the Office of Excise of the Division or Place, &c. on the Forfeiture of 2 *s.* 6 *d. per* Bushel. Nor shall permit any Corn to sprout at the End from which the Blade proceeds; if he does, then an Officer may take up an Handful in any particular Part of the Floor or Wetting; and if he find that more than one Part in fifteen in his Hand sprouts out at the End, the entire Wetting shall be deemed of the same Nature; and the Malster shall be charged with the full Duty of Six-pence *per* Bushel; and likewise shall forfeit 5 *s.* for every Bushel.

Sessions may upon Appeal finally determine Informations, &c. on Excise.

Upon Appeals to the Sessions from any Judgment given by particular Justices, upon Informations for Offences relating to the Duties on Malt, Hides, and Skins, &c. the Sessions may re-examine the Truth and Merits of the Fact, upon the Oaths of the Witnesses, and finally determine the same, and rectify and amend any Defects of Form in the Orders of particular Justices.

9 Geo. 1. c. 3. Malt lost or damaged after Duty paid, must be allowed for.

By the 9th of K. *Geo.* 1. *c.* 3. If after the 25th of *March*, 1723, and after the Duties by 12 *Ann. cap.* 2. imposed on Malt, and thereby continued, are paid, any Quantity of Malt shall happen to be destroyed or damaged by Fire, or shall perish or be damaged by

by the caſting away of, or by any inevitable Accident happening to any Barge or Veſſel, in which the Malt ſhall be tranſporting from one Part of this Kingdom to another, or put on Board for that Purpoſe; and this being proved by the Oath of one or more credible Witneſſes, and of the Duty being paid before the Juſtices in the Quarter-Seſſions; then the Seſſions may grant a Certificate thereof, and of the Amount of the Duty; and upon producing ſuch Certificate to the Collector of the Duties on Malt, he ſhall repay the Proprietor ſo much Money as the Sum certified to be paid for the Duty of the Malt ſo loſt ſhall amount unto; and if not totally loſt, but damnified only, the Seſſions ſhall ſettle the *Quantum*, on Proof of the Damage and Payment of the Duty; and certify under their Hands and Seals how much they allow for Damages, to be repaid by the Collector. *Vid. le Statute.*

Malſters to make Entries once a Month.

By Stat. 8 & 9 of *W.* 3. *c.* 18. Every Maker of Malt ſhall once a Month make an Entry at the next Exciſe-Office of all the Malt he hath made, under the Penalty of 10 *l.* and ſhall within 3 Month after (but now the Time is enlarged to 4 Months, by Stat. 1 G. 1. *cap.* 2.) pay the Duty for the ſame reſpectively; and refuſing or neglecting to make ſuch Payment, or ſelling or delivering out any Malt before the ſaid Duty be cleared, ſhall forfeit double the Duty in the firſt Caſe, and double the Value in the laſt.

Officers of Exciſe may enter in the Day-time.

Officers of Exciſe are to enter in the Day-time into the Houſes, Malt-houſes, or other Places, to gauge the Veſſels uſed for ſteeping Barley, &c. for making of Malt, and take an Account of the Quantity ſteeped therein, leaving a Copy of the Account with the Malſter for a Charge. Malſter refuſing Entrance to the Officer forfeits 5 *l.*

Malſter not to alter his Veſſel without giving Notice.

No Maker of Malt ſhall alter his Veſſel for ſteeping of Barley or Grain for Malt, without firſt giving Notice thereof to the next Officer of Exciſe, nor keep any private Veſſel for that Purpoſe, under the Penalty of 50 *l.*

Collectors may agree for 5 s. per Head.

Collectors of Exciſe may agree with Perſons making Malt for their own Families only, at 5 *s. per Ann.* for every Head in the Family, and take Security for paying the ſame Quarterly: But if ſuch Perſon, after Compoſition, ſhall ſell or deliver out any Malt to others, or ſell any Beer, Ale, or other Liquors made of Malt, he ſhall forfeit 50 l. and loſe the Benefit of ſuch Compoſition.

The

The Buſhel in this Act is meant to be the *Winchester* Buſhel; and the Barley or Grain in ſteeping, or ſteeped, ſhall be returned as ſo many Buſhels of Malt, according to ſuch Buſhels; but out of every twenty Buſhels of Malt, charged by the Gauger, there ſhall be an Allowance of four Buſhels, in Conſideration of the Difference between Corn wet and ſwollen, and the ſame converted into dry Malt. What Meaſure is meant.

By Stat. 2 *Ann. c.* 2. If any Maker of Malt ſhall conceal or convey away his Malt from the Sight of the Gauger appointed, he ſhall forfeit 10 *s.* for every Buſhel thereof. Penalty of concealing Malt.

Juſtices have Power to mitigate the Penalties above, ſo as not to be reduced to leſs than double the Duty, and the Coſts and Charges in Proſecution, as in the Caſe of Brewers.

If any Malt ſhall be brought from *Scotland*, either by Sea or Land, it ſhall be entred either at the Port of Landing, or at *Berwick* or *Carliſle*, and pay Duty 6 *d.* *per* Buſhel, on Pain of forfeiting the Malt, or the Value thereof, by Stat. 9 *Ann. c.* 3. All Proſecutions on this Act to be made within five Years after the Offence committed.

For Forfeitures of Malſters for Concealments to defraud the King of his Duty, Conviction to be by Information on Oath of Gaugers, &c. before two Juſtices of Peace. 13 & 14 *W.* 3. *c.* 5. How Convictions of Malſters muſt be.

By 7 *Ann. c.* 3. No Malſter ſhall mix Corn or Grain making into Malt of one Wetting, with Corn making into Malt of a former Wetting, before the ſame is put on the Kiln for drying, on the Forfeiture of 5 *s.* for every Buſhel ſo mixed; one Moiety to the King, the other to the Informer. 7 *Ann. c.* 3. Malſters muſt not mix freſh Corn in malting.

A Warrant to levy the Forfeiture for wetting Barley on the Floor, &c.

Eſſex, ſſ. WHereas A. B. *of*, &c. *Gauger of Exciſe, hath this Day made Information on Oath before us* C. D. *and* E. F. *Eſqs; Juſtices of the Peace for the County aforeſaid, that* G. H. *of*, &c. *on*, &c. *wetted or cauſed to be wetted, fourſcore Buſhels of Barley making into Malt on the Floor, in the Houſe of the ſaid* G. H. *and not in his Ciſtern duly entred, contrary to the Statute in that Caſe made and provided: Theſe are therefore to command you to levy on the Goods and Chattels of the ſaid* G. H. *the* 6 Geo. 1. c. 21.

Sum of 10l. *which he hath forfeited by the Offence aforeſaid.* Given, &c.

A Warrant to levy the Forfeiture for not making an Entry.

13 & 14 W. 3. c. 5.

Eſſex, ſſ. *WHereas* A. B. *of*, &c. *Officer of Exciſe, has this Day made Oath before me that* C. D. *of your Pariſh, Malſter, hath for this ſix Weeks laſt paſt and more, made Malt in a Houſe belonging to the ſaid* C. D. *ſituate*, &c. *without making any Entry, at the Exciſe-Office, of the ſaid Malt, as the Acts of Parliament direct, whereby he hath forfeited the Sum of* 10l. *Theſe are therefore in his Majeſty's Name, to require you to demand the ſaid* 10l. *of the ſaid* C. D. *ſo forfeited as aforeſaid; and upon his Refuſal to pay the ſame, that you do levy the ſame on the Goods and Chattels of the ſaid* C. D. *by Diſtreſs and Sale thereof, rendring to him the Overplus* (*if any.*) Given, *&c.*

A Warrant to levy the Forfeiture for concealing of Malt and Ciſterns for ſteeping of Malt.

13 & 14 W. 3. c. 5.

Eſſex, ſſ. *WHereas* A. B. *of*, &c. *Gauger, hath this Day made Information on Oath before us, that on*, &c. *of this Inſtant*, &c. *in the Houſe of* C. D. *Malſter, ſituate*, &c. *he found out and diſcovered a private Ciſtern or Veſſel for ſteeping of Barley, at which Time there were thirty Buſhels of Barley ſteeping in the ſaid Ciſtern unentered, contrary to the Statute in that Caſe made and provided: Theſe are therefore in his Majeſty's Name to command you to levy on the Goods and Chattels of the ſaid* C. D. *the Sum of* 14l. *which we do hereby adjudge he hath forfeited, and order to be paid, and no more, for the Offence aforeſaid, by Virtue of the Power to us given by the Acts of Parliament to mitigate Penalties for the Offences of this Kind.* Given, *&c.*

Manſlaughter. See Homicide.

Manufactures.

See Artificers and Apprentices.

PErſons employed in making up the Woollen, Linen, Fuſtian, Cotton, or Iron Manufactures, embezilling or purloining any Wefts, Thrums, or Ends of Yarn, or any other Materials of Wool, Hemp, Flax, Cotton, or Iron, with which intruſted, or that ſhall reel falſe or ſhort Yarn, being thereof convicted by Oath of one Witneſs, or Confeſſion, before one Juſtice, &c. ſhall forfeit double the Value of Damages done, for the Uſe of the Poor. On neglect or Refuſal to pay, to be ſent to the Houſe of Correction till Satisfaction made; if not able, to be kept there not above 14 Days, publickly whipped, and kept to hard Labour. Buyers and Receivers of, &c. liable to the ſame Puniſhment. 1 *Ann.* c. 18. This Act at firſt was temporary, but by 9 *Ann.* c. 30. was made perpetual.

1 Ann. c. 18. Manufacturers not to embezil Goods with which they are intruſted.

Markets and Fairs.

THESE being by Grant or Preſcription, if they are held otherwiſe, they are unlawful. 2 *Saund.* 174.

Are held by Grant or Preſcription.

In every Shop in *London*, every Day (except *Sunday*) is a Market Overt; and the Sale in Shops there for a juſt and valuable Conſideration is good.

But then it muſt be of ſuch Goods which are proper to the Trade of him in whoſe Shop 'tis ſold; as Plate in a Goldſmith's, &c. 5 *Co.* 85.

And it muſt be ſold openly in the Shop, and not in a clandeſtine and ſecret Manner; and the Buyer muſt not know that the Goods are ſtolen. In the Country where Things are ſold in diſtinct Places in a Market or Fair, the Goods muſt be ſold in the uſual Place appointed for the Sale thereof, otherwiſe the Property is not altered. *Moor* 300. 3 *C.* 78.

3 Rep. 78.

If I deliver Goods to another to keep for me; or if I pledge them, and he ſells them in a Market, the Property is ſtill in me, and is not altered by ſuch Sale. *Hob.* 79.

Goods ſold by one to whom they were pledged, the Property is not alter'd.

Sale upon a *Sunday*, though in a Market or Fair, does not alter the Property. *Co.* 5 *Rep.*

It hath been a Queſtion whether a Clerk of a Market can diſtrain *ex Officio*, for uſing unlawful Weights or Meaſures not according to the Statute.

Fairs are not to be held for more Days than they are granted.

Fairs or Franchiſes, whether they be held by Charter or Preſcription, muſt be holden for no more Days than may be warranted by Grant or Uſage; and the Sheriff ought to make Proclamation that thoſe who have Fairs, keep them no longer than they ought to do. 2 *Ed.* 3. *c.* 15. And the Lord of the Fair at the Beginning thereof ſhall make Proclamation how long the ſame is to continue, on Pain to be grievouſly amerced to the King; and if he hold over, the Fair ſhall be ſeiſed into the King's Hand till he make Fine for the Offence: And if a Merchant ſell Wares after the Time, he ſhall forfeit to the King double the Value for what 'tis ſold; and the Proſecutor ſhall have the fourth Part. 5 *Ed.* 3. *c.* 5.

No Fair or Market ſhall be kept in Church-yards.

No Fair or Market ſhall be kept in Church-yards. 13 *Ed.* 1. *c.* 6. Stat. *Wincheſter.*

None ſhall buy Cattle to ſell them again in the ſame Fair. 3 & 4 *Ed.* 6. *c.* 19.

Touching Sale of Horſes in Fairs, &c. See Tit. Horſes.

For Office of the Clerk of the Market, ſee Tit. Weights and Meaſures.

He that pleads a Sale in Market, muſt plead that it was done *in pleno Mercato.*

11 & 12 W. 3. c. 24. Billingſgate is a free Fiſh Market.

By Stat. 10 & 11 *W.* 3. *c.* 14. *Billingſgate* is made a free Market for Fiſh every Day, except *Sundays.*

No Fiſherman or other Perſon ſelling Fiſh there, ſhall pay any other Toll or Duty for every Veſſel with Salt-Fiſh for Groundage, 3 *d. per* Day, and 20 *d. per* Voyage, to be diſpoſed of as Lord Mayor and Court of Aldermen direct. For every Lobſter-Boat, every Veſſel with freſh Sea-Fiſh, and every Dogger-Boat or Smack with Sea-Fiſh, for Groundage 8 *d. per* Day, and 13 *d. per* Voyage; and for every Oyſter-Veſſel or Cock, for Groundage 2 *d. per* Day; for Metage one Half-penny *per* Buſhel, and 13 *d. per* Voyage, and no more, in full for all Duties, &c. to be diſpoſed of as aforeſaid.

All Perſons buying Fiſh at *Billingſgate* may ſell the ſame again any where in *London* by Retail, only none but Fiſhmongers ſhall ſell in fixed Shops, or Houſes.

This Act not to alter any Law in Being, concerning Fiſh caught by Foreigners.

Any Perſons taking Toll or Sample, or any other Impoſition on any Sea-Fiſh of *Engliſh* Catching (being contrary to 5 *Eliz. c.* 21.) ſhall forfeit 10*l.* one Moiety to the King, the other to the Proſecutor.

None to buy Lots of Fiſh for Fiſhmongers.

None ſhall employ or be employed by any other Perſon in buying at *Billingſgate*, any Quantity of Fiſh, to be divided by Lots or in Shares among any Fiſhmongers or others, to be afterwards ſold by Retail or otherwiſe. Nor ſhall any Fiſhmonger ingroſs or buy in the ſaid Market any Quantity of Fiſh but what ſhall be for his own Sale or Uſe, and not for any other Fiſhmonger to ſell again, under the Penalty of 20*l.* each Offence; one Moiety to the Poor of the Pariſh, the other to the Proſecutor.

No Fiſherman or other Perſon ſhall bring on Shore or ſell any Lobſters which are not eight Inches long, under Penalty of 12*d.* for every ſuch Lobſter; one Moiety to the Poor, the other to the Proſecutor, to be recovered on Conviction before the chief Magiſtrate of any City or Corporation, or before the next Juſtice of Peace where the Offence is committed.

Fiſh not to be imported in Foreign Ships.

No Fiſh (except Stock-Fiſh and live Eels) taken by any Foreigners, Aliens (except Proteſtant Strangers inhabiting within the Kingdom) ſhall be imported in any Foreign Ship or Veſſel, not being wholly *Engliſh* Property, and ſold in *England*, under the Pain of forfeiting ſuch Ship, *&c.* with its Tackle, and all the Fiſh ſo imported and ſold; one Moiety thereof to the Poor of the Pariſh where ſeized, the other to the Seizor; but not to prohibit the Importation of Anchovies, Sturgeon, Botargo, or Cavear, nor ſelling Mackarel before or after Divine Service on *Sundays*.

A Sale in a Market Overt ſhall not bind him who hath Right to Goods, if the Sale be by Fraud; or if the Perſon that buys the Goods hath Notice that the Property is another's. *Hill.* 33 *H.* 6. *f.* 5. *pl.* 15.

Where Plate was ſtolen, and afterwards ſold in a Scrivener's Shop, the Property was not altered; nor if it had been ſold to a Goldſmith in a Back-Shop; but the Sale muſt be in an open Shop, where every one that paſſes by may ſee. So reſolved *Hill.* 38 *Eliz.* at the Seſſions in the Old-Baily. 5 *Co.* 83. *Poph.* 84. 1 *And.* 344. *pl.* 319. *Hetly's Rep.* 62, 63. *Panton* verſus *Haſſel. Godb. Rep.* 131. *Kelynge's Rep. p.* 35.

Sale to a Pawn-broker, though in his Shop, alters no Property. *Kelynge* 50. it is not a Market Overt. 1

Ja. 1. *c.* 21. So his Sale of pawned Goods alters not the Property. *Hob.* 79.

Refuſing one the Goods, on the Sum tendred, and to make Delivery, indictable. *Black.* 229. *Sed Quære de hoc.*

Maſter. See Apprentices.
Meaſure. See Weights.
Militia and Muſters. See Soldiers.
Miller. See Weights.
Miniſter. See Divine Service.
Miſpriſion of Treaſon. See Treaſon.

Marriages.

See Bigamy and Felony, and Woman.

Marriages by Juſtices of Peace made good.

ALL Marriages made ſince 1642, before any Juſtice of Peace, confirmed and made good, and Iſſues about Baſtardy, or otherwiſe touching the ſame, to be tried by Jurors, by Stat. 12 *Car.* 2. *c.* 33.

If any Parſon, Vicar or Curate ſhall marry any Perſon without publiſhing the Banns of Matrimony, or without Licenſe, he ſhall forfeit 100*l.* and the Perſon married 10*l.* alſo the Clerk of the Pariſh 5*l.* to be recovered in the Seſſions, &c. 6 & 7 *W.* 3. *c.* 20.

Miſdemeanor.

THIS Word in its general Senſe, including all Sorts of Crimes and Offences, it would be endleſs to enumerate all that might be ſpoke to under this Head; I ſhall therefore content myſelf with mentioning a few.

Parſon in Woman's Cloaths whipping a Man, fin'd 500 l.

A Woman being abuſed by her Husband, hired a Parſon to come and whip him; who accordingly came in Woman's Cloaths with a Rod, and fell upon the Husband: In ſtruggling they were both hurt, and the Parſon ran away from the Husband, who died a little after the Scuffle: All this coming in Proof before the Court, the Wife and Parſon were each of them fined 500*l.* *Poph.* 129.

One

One sent a Challenge by another to fight; they were both indicted for this Misdemeanor, and fined 100*l.* a-piece, and committed for a Month without Bail; and were to make a publick Recantation, as the Court should direct, and to be of the Good Behaviour for seven Years. *Sid.* 186.

One sending a Challenge, fin'd 100*l.*

Sir *C. S.* was indicted at Common Law for a Misdemeanor for shewing himself stark naked, and other Enormities, in a Balcony in *Covent Garden*. He confessed the Indictment, was fined 2000 Marks, and to be committed for a Week without Bail; and to be of the Good Behaviour for three Years. *Sid.* 162.

Sir C. S fin'd 2000 Marks for a Misdemeanor.

Another was indicted for seducing an Apprentice to a Bawdy-House, and causing him to spend his Master's Money. *Sid.* 168.

Another fin'd for seducing an Apprentice.

Another for intending to kill the Master of the Rolls, and offering a Person 100*l.* to do it, was fined 1000 Marks, to be imprisoned three Months without Bail, and to be of the Good Behaviour during Life. *Sid.* 231. *Levinz* 146. *Baron's* Case.

Another fin'd 1000 Marks for offering 100*l.* to kill the Master of the Rolls.

Another for reading a Release to an illiterate Man in other Words than it was written, which he sealed. *Sid.* 312.

Another for misreading a Release to an illiterate Man, who sealed it.

A Condition of a Recognizance for Misdemeanor.

UPON *this Condition, that if you* A. B. *shall personally appear before our Sovereign Lord the King's Justices of the Peace, at the next general Quarter-Sessions of the Peace, to be holden for the County of* Essex; *and do then and there make answer unto all such Things which (on his Majesty's behalf) shall be objected against you; and do not depart thence without Leave of the Court; then this your Recognizance to be void, or else to stand and be in full Force and Virtue,* &c.

Misprision.

IS where one knows that another has committed Treason or Felony, but was not consenting to it, and yet conceals the Offender. For if he knoweth of the Treason before it is committed, or if he receive and comfort a Traitor, knowing him to be so, then

What is Misprision of Treason.

he is a principal Traitor; for there are no Acceſſaries in Treaſon.

By the Common Law, concealing Treaſon was Treaſon, but now by Statute of 1 & 2 *M.* *c.* 10. it is declared to be only Miſpriſion.

Forging Foreign Money Miſpriſion of Treaſon.

By 14 *Eliz.* *c.* 3. Forging foreign Money is made Miſpriſion of Treaſon.

The Judgment in Miſpriſion of Treaſon.

The Judgment in Miſpriſion of Treaſon is Forfeiture of Goods and Chattels for ever, Forfeiture of Profits of Lands, during Life, and Impriſonment during Life. 3 *Inſt.* 134.

And in the like Caſes.

Like Judgment is it, with the Loſs of the Right Hand, for one to draw a Sword, or ſtrike a Judge or Juryman in the Preſence of a Judge ſitting in Court, or to ſtrike one in *Weſtminſter-Hall*, ſitting the Courts, or to draw a Weapon upon any Judge or Juſtice in Preſence of a Judge of Aſſize, or to reſcue a Priſoner from the Bar of *B. R.*

Miſpriſion of Felony.

By the Common Law, concealing a Felony, or procuring the Concealment, or compounding it, was Miſpriſion of Felony.

But if a Man knows that a Felony is committed, and takes his Goods again, 'tis no Offence, unleſs he takes them, or ſome other Amends, not to proſecute, and then it is called Theftbote; and this is an Offence more than a Miſpriſion of Felony, becauſe it is more than a Concealment of the Felon, but the Puniſhment is the ſame in both Caſes, *viz.* Fine and Impriſonment, if in a common Perſon; if in an Officer a Fine, and though paid, Commitment for a Year.

Puniſhed by Fine and Impriſonment.

Grand Juryman may be fined and impriſon'd.

If a Grand Juryman diſcover the Perſons indicted, or the Evidence, he is puniſhable by Fine and Impriſonment.

If a Perſon aſſault a Judge, or Judge of Aſſize, the like Puniſhment.

Or if he aſſault a Juror, for giving a Verdict againſt the Offender.

What Juſtices may and ought to do.

And though Juſtices of Peace are not impowered by their Commiſſion, or by any Statutes, to hear and determine theſe Offences, yet ſince they are againſt the Peace, they may cauſe the Offenders to be taken; and two Juſtices may take Informations upon Oath againſt ſuch Perſons, and put it into Writing, and bind the Witneſſes in a Recognizance to proſecute and give Evidence at the Aſſizes, &c.

Every Treaſon includes Miſpriſion.

N. B. That every Treaſon or Felony do include Miſpriſion, ſo that where any Perſon hath committed Treaſon or Felony, the King may cauſe the Offender

to

to be indicted and arraigned but of Miſpriſion only. *Dalt.* 335.

Compounding of Felonies is alſo Miſpriſion of Felony at the leaſt, if it be not Felony. *Ibid.*

N. B. That all Treaſons, Miſpriſion of Treaſon, and Concealment of Treaſon, done or committed out of the Realm, ſhall be inquired of and tried within the Realm; *viz.* in the King's Bench, or elſe before Special Commiſſioners. 35 *H.* 8. *c.* 2. *&* 5 *Ed.* 6. *c.* 11. *Dyer* 132, 287, 298, 360. *Co.* 7. 23. and 11. 63.

Treaſons out of the Realm where to be tried.

Mittimus.

A Mittimus is the Warrant by which the Priſoner is ſent to Gaol, *&c.*

What a Mittimus is.

It muſt be in Writing, and under Hand and Seal.

The Names of the Party committed, the Time of making it, the Cauſe of the Commitment muſt be expreſſed in it; as for Treaſon, Felony, or Suſpicion thereof; that it may appear whether the Priſoner be bailable or not; and that thoſe who have the Cuſtody of him, may take the more Care of him; for if the Cauſe be expreſſed to be Treaſon or Felony, it is ſo in the Officer who ſuffers him willingly to eſcape, whether he be guilty or not: Otherwiſe if no Cauſe be expreſſed. If it be a Commitment to the Houſe of Correction only, the Mittimus ought to expreſs the Cauſe. *Co.* 2 *Inſtit.* 52. If the Commitment be without Bail or Mainprize, and it expreſs the Cauſe, which is a Caſe wherein he is bailable by Law, it ſeems reaſonable that other Juſtices of Peace may bail him; but if no Cauſe be expreſſed, other Juſtices ſhall not do well to bail him without the Privity of the firſt Juſtices; becauſe the Cauſe of the Commitment may (probably) not be bailable. *Dalt.* 439.

How to be framed.

If the Mittimus be general, the other Juſtices that bail, muſt take Notice at their Peril. *Ibid.*

For the Peace it ought to expreſs what Sum is demanded of the Sureties, that it may not be exorbitant. 2 *Vent.* 22.

Some have been of Opinion 'tis beſt for the Juſtice to give a Warrant to the Conſtable to carry the Offender, and alſo a Mittimus to the Gaoler to receive him, eſpecially if it be for an Offence againſt a Statute.

Muſt be to the common Gaol.

The

And directed to the Gaoler.

The Mittimus ſhould be directed to the Gaoler or Keeper of the Priſon: It ought alſo to expreſs the Perſon who makes it; as *A. B.* one of the Juſtices of Peace of the County of, *&c.*

It muſt have apt Concluſion.

It muſt have an apt Concluſion, as thus, [The Priſoner ſafely to keep until he be delivered by due Courſe of Law, *&c.*] But then that general Concluſion is not good, when the Priſoner is committed for not doing ſomething ordered or enjoined by ſome Statute; as to find Sureties, or the like; for then the Mittimus muſt conclude accordingly; and great Care is to be taken of this, or otherwiſe the Warrant is void. *Co. 2. Inſt.* 591.

If the Mittimus be for Felony, and the Felon hath confeſſed the Felony upon his Examination, it ought to be ſo expreſſed in the Mittimus.

A Mittimus of a Priſoner on Suſpicion of Felony.

Eſſex, ſſ. J. S. *one of His Majeſty's Juſtices*, &c. *to the Keeper of His Majeſty's Gaol of* Chelmſford *for the ſaid County*, &c. *or to his Deputy there, Greeting. Theſe are in His Majeſty's Name to charge and command you that you receive into your ſaid Gaol the Body of* A. B. *late of*, &c. *taken by* F. C. *and* J. S. *Conſtables of the Town of* W. *and by them brought before me, for Suſpicion of Felony*, &c. *and that you ſafely keep the ſaid* A. B. *in your ſaid Gaol until the next general Gaol-Delivery for the ſaid County* [if he be not bailable; or if he be bailable, then thus] *until he ſhall thence be delivered by due Courſe of Law: And hereof fail not*, &c.

A Mittimus of a Felon after his Examination taken.

Eſſex, ſſ. J. S. *Bart. one of the Juſtices*, &c. *to the Keeper of His Majeſty's Gaol at* Chelmsford, *for the ſaid County*, &c. *Greeting. I ſend you herewith the Body of* R. G. *late of* F. *Apothecary, brought before me this Day, and charged with the felonious Taking of twenty Sheep*; (*which alſo he hath* * *confeſſed upon his Examination before me*) *and therefore theſe are* (*on the Behalf of our ſaid ſovereign Lord*) *to command you that immediately on Sight hereof, you receive the ſaid* R. G. *and him ſafely keep in your ſaid Gaol, until that he ſhall be thence delivered by due*

* But this Clauſe maketh the Priſoner not to be bailable.

due Course of Law. Hereof fail you not, as you will answer for your Contempt, at your Peril. Given, &c.

Money.

ALL foreign Coins, which by the King's Proclamation are allowed to pass, are to be paid and received for good Money.

Foreign Coin made to pass current by Proclamation.

By 19 *H.* 7. If any refuse lawful Coin in Payment, he is to be compelled by the Officer of the Place to take it, and imprison'd, or otherwise punished, as such Officer shall think fit. And if a Sheriff or other Officer refuse it, he may be compelled to take it by a Justice of Peace, and otherwise punished at the Justice's Discretion, upon 19 *H.* 7. *c.* 5. but *Quære* how it may be; he may bind them to the Good Behaviour for a wilful Contempt herein: It is safe to do it at Sessions. Any one Justice may compel a Man to take crack'd Money or commit him to Prison, upon 19 *H.* 7. *cap.* 5.

Justices have Power to hear and determine all Defaults about Money. *Ibid. Co.* 2. *Inst.* 742.

By 9 & 10 *W.* 3. *c.* 21. Any Person to whom Silver Money shall be tendred, that shall be diminished otherwise than by wearing, or that shall be suspected to be counterfeit, may cut or break the same in Pieces; and if it appear to be so, Person tendring shall bear the Loss; if not, Person breaking shall take it for what it was coined. If any Dispute arise about it, one Justice, Mayor, &c. may tender an Oath to any Person for the determining any Question relating to the Piece.

One Justice may hear and determine whether a Piece of Money be good or not.

Mortuaries.

IT is Extortion to take any thing at all for a Mortuary, where by the Custom they have not usually been paid, nor where the Goods of the dead Person come not to ten Marks, besides Debts; or for a married Woman, or Infant, or one that keeps no House, or wayfaring Man, or any that is not resident where he died; or to take above 3 *s.* 4 *d.* for a Mortuary when the Goods amount to ten Marks, and under thirty Pounds; or above 6 *s.* 8 *d.* where the Goods are thirty Pounds, and under forty Pounds; or above ten

In what Cases Mortuaries are to be taken and when not.

ten Shillings, where the Goods are above 40 *l.* the Debts paid; and the Taker forfeits ſo much as he takes, and likewiſe 40 *l.* to the Party grieved. *Cr.* 59. *a. N.* 28. 21 *H.* 8. *c.* 6. And if the Perſon die in a Place where he or ſhe dwelleth not, their Mortuary ſhall be paid in the Place where they had their moſt Abode.

There is a Proviſo in the ſaid Statute, that Mortuaries ſhall be paid in *Wales*, where they have been accuſtomed to be paid; and that the Archdeacon of *Cheſter* may take them that have been uſually paid.

Prohibition lies upon Suit in Court Chriſtian, for Mortuaries not due, beſides an Indictment for Extortion.

Murder. Vide Homicide.
Muſter. Vide Soldier.

Mute.

Where an Offender ſtands mute.

WHEN an Offender is arraigned, and either will not anſwer at all, or will not anſwer directly, or plead; then he is ſaid to ſtand mute. In the firſt Caſe it muſt be enquired, whether he is mute by the Act of God, or by Malice and Stubbornneſs, &c. If he was born dumb, or is mute by the Act of God, then the Court and the Jury muſt go on and enquire of the Folony, and whether the Perſon at the Bar be the ſame Perſon; but if he is mute by Malice, then he ſhall have Judgment, and ſo he ſhall, if he doth not anſwer directly.

Judgment where Mute in Treaſon.

But in Treaſon to ſtand mute, is taken for a Confeſſion, and conſequently amounts to a Conviction, and the Criminal ſhall ſuffer as a Traitor, and after Attainder, ſtanding mute muſt be executed. *Dy.* 241.

In Appeal.

In Appeal muſt be hanged.

Judgment where mute in Felony. Peine fort & dure.

If one indicted of Felony (for which he is not to have Clergy) ſtands mute, he ſhall have Judgment of (*Peine fort & dure*); which is that the Offender be remanded to Priſon, and laid in a low and dark Room, naked on the Ground, and on his Back, and his Arms and Legs extended by Cords, and Iron or Stone laid on his Body, ſomething more than he can bear; next Day he ſhall have three Morſels of Barley Bread, without Drink; the third Day he ſhall drink thrice of the Water next the Priſon, but not running

running Water, and ſhall have no Bread; and thus he ſhall be kept till dead; and beſides this he forfeits all his Goods. *Moor* 550.

But where he is arraigned of a Felony, in which Clergy is allowed, there he ſhall have his Clergy. *Moor. Ibid.*

Needle-Work. See Bone-Lace.
Nets. See Hunting, Partridges and Pheaſants, Game, Fiſh, &c.
News. See Pamphlets.

Night-Walkers.

NIght-Walkers, if juſtly ſuſpected, or of ill Fame, ſuch as ſleep in the Day-Time, and haunt Bawdy-houſes by Night, or keep ſuſpicious Company, may, upon Oath made thereof, be compelled to find Sureties for the Good Behaviour, by a Juſtice of Peace; and that by the firſt Aſſignavimus in the Commiſſion. 13 *Ed.* 1. Stat. *Winch. cap.* 4 & 5 *Ed.* 3. *cap.* 14.

Night-Walkers to be bound to the Good Behaviour, and may be indicted at Seſſions.

Any one may arreſt Night-Walkers, and they may be indicted at Seſſions. *Poph.* 208. *Latch* 137, 173. *Bendlowe's* 199. *Poph.* 208.

Night-Walkers ſuſpected to be Pilferers, or otherwiſe like to diſturb the Peace, or of evil Fame, may be bound to their Good Behaviour. *Dalt. c.* 35. *c.* 87.

Noblemen. See Peers.

Non-conformists.

PErſons in any publick Office or Employment, Place of Truſt, Profit, or that receive any Salary or Wages, by Reaſon of any Grant, Patent, &c. or bear Office of Truſt in any Corporation, nonconforming to the Church of *England*, ſhall forfeit 40 *l.* to be recovered in *Weſtminſter-Hall*, and uncapable of any Office, &c. for the future, unleſs conform for a Year, and receive the Sacrament three Times within the ſame. 10 *Annæ c.* 2. but Part of this Act, and

10 Ann. c. 2.

and also the Schism-Act made 12 *Ann. c.* 7. are repealed by a Statute 5 *Geo.* 1. *c.* 4.

Norwich and Norwich Stuffs.

13 and 14 Car. 2. c. 5. 12 Wardens and 30 Assistants to be chose.

BY 13 & 14 *Car.* 2. *c.* 5. In *Norwich* and the County of *Norfolk*, there must be 12 Wardens and 30 Assistants chose, who within 14 Days after Notice thereof, must take an Oath before the Mayor, faithfully to discharge their Office: If they refuse or die within the Year, the Master-Weavers may choose others. *Raym.* 192.

Half of the Wardens are to be chosen on *Whitson-Monday*, by the greater Part of the Master-Weavers in the City: Half of the Assistants on the same Day by the greater Part of the Weavers of the County.

7 Wardens may meet when they please.

Seven of the Wardens and Assistants may meet when they please, or as often as desired by the Assistants. 14 Days before they intend to meet, the Wardens of the City must give Notice to those in the County, when they intend to meet, by setting such Notice upon the Door of their *Sealing-Hall*.

2 of them may search in publick Places.

Two of them may search in the publick Places for Sale, and seize defective Yarns, and within 20 Days afterwards bring them to a Trial by Jury, who may impose fines on the Yarn, not exceeding half the Value, to the Use of the Poor of the Trade. By-Laws being made and confirmed by the Mayor and two Justices of the City, and three of the County (*Quorum unus*) must be published four Times in a Year, at four Assemblies for Trade, and may impose Fines not exceeding 10 *s.* for every Offence.

Any hindering them, forfeits 40 s.

Any one disturbing them, convicted by Oath of one Witness, or by his own Confession, before the Mayor or a Justice of Peace of the City or County, forfeits 40 *s.*

To account before the Mayor and one Justice.

At their four Assemblies for Trade, they are to account before the Mayor and one Justice of the City, and two of the County, for what Fines and Forfeitures they have received, and what they have expended about the Trade, and what remains by the said Mayor and Justices to be divided as they shall direct, between the Poor of the Trade of the City and County.

Whom the Jury must consist of.

The Jury must consist of twelve Artificers, Half of the City, and half of the County, and must be impanelled

nelled by Precept from the Mayor or Deputy; and if any being ſummoned refuſe to appear, forfeits 5 *s.* to the Poor of the Trade.

All Stuffs in which there is Wool, muſt be under the Regulation of Wardens and Aſſiſtants, and muſt be brought to *Weaver's-Hall*, in *Norwich*, before they are expoſed to Sale; and if found good, then ſealed; if defective, they muſt be tried by a Jury, *&c.* who may ſet Fines not exceeding Half the Value of the Stuffs, for the Uſe of the Poor of the Trde, and detain them till paid, and ſell them, if not paid within forty Days after Trial.

They in whoſe Poſſeſſion unſealed Stuffs ſhall be found, forfeit 40 *s. per* Piece, and the Maker or Seller 4 *s.* for ſelling them unſealed, to the Uſe of the Poor of the Trade.

Perſons in whoſe Poſſeſſion unſealed Stuffs are found, forfeit 40 *s.*

If Wardens ſeal Stuffs which ſhall be found defective by Jury, ſuch Jury may ſet Fines on the Wardens of 40 *s.* for every Stuff, but Wardens ſhall have double Damages for unjuſt Vexation.

Perſons convicted before the Mayor, or a Juſtice of the City or County, by Confeſſion, or Oath of two Witneſſes, of counterfeiting the Seal or Sealing therewith, or removing the Seal from one Piece to another, forfeit 20 *l.*

Perſons convicted forfeit 20 *l.*

Every one muſt have his proper Mark upon every Piece made by him, or forfeit 3 *s. per* Piece to the Poor of the Trade.

The Forfeitures are to be levied by Diſtreſs, *&c.* by Warrant from Mayor or Juſtice, or by Action of Debt, Indictment, or Information. All Yarns and Worſteds muſt be reeled on a Reel of a Yard about, and every Reel Stuff muſt have fourteen Lees.

How Forfeitures are to be levied.

By Stat. 9. *G.* 1. *c.* 9. It is enacted, That all Manufacturers or Makers of Stuffs made of Wool, or in which there is any Mixture of Wool, and all Makers of Worſted into Yarn, who are not Journeymen or Servants for Hire, Maſter Weavers, and Maſter Woolcombers; and all Perſons dealing or employing Servants and Journeymen in any ſuch Manufactures, or having any Intereſt, Share or Partnerſhip therein living in *Norwich*, ſhall be made Free, and admitted Freemen of that City, on their Requeſt to be made at any Aſſembly of the Corporation of the ſaid City, paying not exceeding 5 *l.* for ſuch Admiſſion and Freedom; and all Perſons to be made Free ſhall take the uſual Oaths, or being Quakers, ſhall take the ſolemn Affirmation.

All Makers of Stuffs, &c. in Norwich, may be made Free for 5 *l.*

If

If follow that Trade without being made Free forfeit 10 l.

If any Perſon (except Servants and Apprentices during their Service) who is any ſuch Manufacturer, or Dealer, &c. preſume to exerciſe any of the ſaid Manufactures, or be otherwiſe intereſted therein, not being made Free, and being convicted thereof on a Proſecution commenced within ſix Months after the Fact committed, he ſhall forfeit 10 *l.* for every Calendar Month, he ſhall exerciſe any of the ſaid Manufactures, or be concern'd therein, next after the third quarterly Aſſembly of the ſaid Corporation, to be recovered by Action of Debt, &c. brought by the Chamberlain, for the Uſe of the Mayor, Sheriffs, Citizens, and Commonalty of the City, in any Court of Record at *Weſtminſter*.

Nuſances. See Highways.

Every one may remove a Nuſance.

EVERY one may in a peaceable Manner aſſemble or meet Company, to do any lawful Thing, or to remove or caſt down any common Nuſance. *Dalt.* 107. *Cromp.* 66.

Every common Nuſance done in the King's Highway is puniſhable in a Court-Leet.

Erecting of a Wall, Part on his own, and Part on another's Land, the other may pull down that Part, though the Owner's Part falls too. 3 *Cro.* 269.

Where Action on the Caſe lies.

An Action of the Caſe lies as well as an Aſſize, for a Nuſance of ſtopping his Way to his Common, tho' the Inheritance comes in Queſtion. 3 *Cro.* 845.

What is a Nuſance.

If any Perſon water Hemp or Flax in any River, running Water, Stream, Brook, or common Pond, where Beaſts are uſually watered, he ſhall forfeit 20 *s.* a Moiety to the Party grieved, or any that will ſue, the other to the King, to be ſued for in any Court of Record.

Importation of Cattle from *Ireland*, declared to be a common Nuſance, by 18 *Car.* 2. *c.* 2.

If a Nuſance be in the Highway, every one may abate it. *Jones* 222.

It is a Nuſance to ſtop a River with Earth, by which the Land is drowned. *Leon.* 222.

A Brew-houſe, Tan-houſe, &c. newly erected, may be a Nuſance to a private Houſe. *Palm.* 530.

To erect a Rope-dancer's Stage at *Charing-Croſs*, was adjudged a Nuſance. 1 *Mod. Rep.* 76.

Alehouſes

What are common Nuſances.

Alehouſes diſorderly kept.
Bawdy-Houſes.
Brew-Houſes.
Bridges, Annoyances in them.
Cottages unlawful.
Eves-droppers.
Gaming-Houſes.
Highways, Annoyances in them.
Inmates.
Melting houſes for Candles.
Rivers, Annoyances in them.
Scolds, common.
Stages for Mountebanks, or Rope-dancers.
Making, Selling, or Throwing Squibs, Rockets, Serpents, *&c.*

All theſe are publick Nuſances, for which an Action on the Caſe will not lie, but an Indictment againſt the Offender, who being convicted, ſhall be fined and committed till he pay it.

N. B. The Indictment muſt conclude *ad commune nocumentum omnium ligeorum, &c.*

What private Nuſances.

Stopping another Man's Lights, or Building an Houſe ſo near to another, that the Water falls on it when it rains, are private Nuſances; but this may be juſtifiable by the Cuſtom of *London*, if upon an old Foundation. *Vide Calthrop's Rep.* So is Setting up a Brick-kiln or Hogſty.

Theſe and the like are private Nuſances, for which an Action on the Caſe will lie, but no Indictment. And both for common and private Nuſances, the Party grieved may enter on the Ground of the Offender, and with proper Inſtruments remove them; and if he is indicted either for a Treſpaſs or a Riot, he will only be fined in a ſmall Sum, if convicted.

Party grieved may remove them.

Where a Man is indicted for a Nuſance, the Court never admits him to a ſmall Fine, till the Nuſance is removed, which muſt be proved by Oath, or by the Certificate of two Juſtices; and the Defendant ſhall never be allowed to make any Objections againſt the Indictment till he hath pleaded to it. *Dalt.* 206.

Court will not admit the Offender to a Fine till Nuſance is removed.

But in theſe Caſes, as in all others, Offenders ought not to be puniſhed without being called to anſwer for themſelves; for they have Liberty to traverſe the Matter alledged againſt them, though 'tis generally held that they cannot traverſe againſt a Preſentment made by a Juſtice of Peace upon his View. *Dalt.* 159.

Offenders muſt not be puniſhed without being called to anſwer.

And as to Nuſances or other Injuries on the Highways, by digging Ditches, making Croſs-Hedges, lay-

Paſſengers may remove Nuſances in the Highway.

ing Logs of Timber, or any other Thing, which in ſome Meaſure may obſtruct the Paſſengers, any Perſon may remove them at Common Law, but cannot convert the Materials to his own Uſe. But in ſuch Caſes no one Perſon can have an Action for obſtructing the Highway; but the Remedy is by Preſentment at the Leet, or by Indictment, unleſs any Man hath a particular Damage; for then he may have an Action on the Caſe, *&c.* as ſtopping a Way to a Common is a Nuſance, for which an Action on the Caſe lieth, though the Inheritance ſhould come in Queſtion. 1 *Inſt.* 56. 3 *Cro.* 845. 2 *Roll.* 137.

Men may meet in a peaceable Manner, and with proper Inſtruments, to remove a Nuſance, but not in greater Numbers than are needful for that Purpoſe.

What Indictments muſt ſet forth.

All Indictments for Nuſances ought to be certain, both as to the Place from which the Way do h lead, and to the Place where it doth lead; but there is not any Neceſſity to ſhew that it leads to a Market Town. But 'tis neceſſary to ſhew in what Place the Nuſance was done, and to what Parts of the Highway it did extend, ſhewing how many Feet in Length and Breadth it contained, becauſe without ſuch Certainty the Defendant cannot make a Defence, nor the Court judge of the Greatneſs of the Offence, that they may the better ſet a Fine; therefore an Indictment for ſtopping a great Part of the Highway at *S.* is not good, becauſe of its Uncertainty, for the Place is not ſufficiently ſet forth.

'Tis neceſſary to ſet forth that the Way was a common Highway.

'Tis likewiſe neceſſary to ſet forth, that the Way, wherein the Nuſance was done, is a common Highway, or that it is a Footway to a Church; but then it muſt not ſet forth that 'tis a Footway for all the Pariſhioners of *S.* but a Footway generally leading to the Church of *S.*

Caſe of the Glaſs-houſe at Lambeth.

The Owner of the Glaſs-houſe at *Lambeth*, was indicted for maintaining that Houſe, being a Nuſance, and was convicted and fined; and it was moved, that by the Act of General Pardon the Defendant was excuſed and diſcharged, both as to the Fine and the Abatement of the Nuſance; but the Court held that he ſhould be diſcharged only as to the Fine, but not as to the Abatement; for that is not a Puniſhment of the Party, but a Removal of that which is a Grievance to other People; and any Perſon may abate a common Nuſance. 2 *Salk.* 458. *Rex & Regina* verſus *Wilcox. Hill.* 1 *W. & M. B. R.*

Oak-Trees and Bark.

BY Stat. 1 *Jac.* 1. *c.* 22. No Perſon ſhall engroſs any Oaken Bark with Intent to ſell the ſame again, on Forfeiture of the Bark or Value. No Perſon ſhall ſell any Oaken Trees fit to be barked where Bark is worth 2 *s.* a Cart-Load, over and above the Charge of Barking and Pilling (Timber only excepted, for neceſſary Reparations and Buildings of Houſes, Ships, *&c.*) but between the firſt of *April* and the laſt Day of *June*, on Forfeiture of every ſuch Oaken Tree, or double the Value thereof. No Perſon whatſoever ſhall uſe for the King's Uſe, *&c.* (except as before excepted) any Oaken Trees fit to bark, but in Barking-time, *&c.* on Forfeiture of 40 *s.* for every Tree, Lops, Tops, *&c.* to Party grieved. Forfeiture to be divided into three Parts; King, Proſecutor, and to the City, *&c.* or Lord of the Liberty, where Offence committed. Determination at Quarter-Seſſions. 1 Jac. 1. c. 22

Oaths.

AN Oath here is a ſolemn Calling or Appealing to God Almighty as a Witneſs of the Truth of what we affirm or deny, in the Preſence of thoſe who are duly authorized to adminiſter it to us; and 'tis called corporal, becauſe in taking it the Party is obliged to lay his Hand on and to kiſs the holy Goſpel. For in this Kingdom none can or ought to adminiſter an Oath but thoſe who are warranted by legal Authority of the Common or Statute Law; and therefore 'tis that our Statutes do ſo often give Power to Juſtices of Peace to adminiſter Oaths. 2 *Inſt.* 479, 719. An Oath, what. Who may adminiſter it. Where binding

Wherefore if an Oath be impoſed on a Man by thoſe who have no legal Authority, or it be taken before a Magiſtrate who hath no Authority to adminiſter it, 'tis void: But if it be voluntary in a ſpiritual Matter and falſe, *viz.* If a Woman ſwear to marry a Man, and doth it not, ſhe may be puniſhed in the Eccleſiaſtical Court *pro læſione fidei*. *Cro. Eliz.* 469, 470. *Knight* verſ. *Ruſhworth*. Where not.

When Peers are ſworn; when not.

Peers are ſworn as Witneſſes for Proof; but when they are the Defendants, they anſwer upon their Honour. *Jones* 154. The Earl of *Lincoln*'s Caſe.

Oaths of Allegiance and Supremacy abrogated.

The Oaths of Allegiance and Supremacy were enjoin'd by 1 *Eliz. c.* 1. and 3 *Jac.* 1. *c.* 4. See by whom, and before whom they were to be taken. 1 *Eliz. c.* 1. 5 *Eliz. cap.* 1. 3 *Jac. cap.* 4, 5. 7 *Jac.* 1. *cap.* 6. *Vide* Title Recuſants.

Juſtices of Peace might grant a Warrant to bring any before them, to take the Oath of Allegiance.

Co. 12. Rep. 132.

The Lord *Vaux* was indicted on the Stat. 3 & 4 *Jac.* 1. *cap.* 4. for not taking the Oath of Allegiance; and being convicted on his own Confeſſion, had Judgment of *Præmunire.*

But the Oaths of Allegiance and Supremacy were abrogated by Stat. 1 *W.* & *M. cap.* 8. and new Oaths appointed; and by the ſeveral ſubſequent Statutes of 7 & 8 *W.* 3. *c.* 24. 12 *W.* 3. *c.* 2. 13 & 14 *W.* 3. *c.* 6. 1 *Ann. c.* 22. & 4 *Ann. c.* 8. 6 *Ann. c.* 14. 8 *Ann. c.* 14.

1 Geo. 1. c. 13.

Several Alterations and Regulations have been made, but the laſt Act was made 1 *Geo.* 1. *cap.* 13. by which all Perſons in Place, Peers and Commoners, all Lawyers, Attornies, all Preachers and Teachers, &c. except Conſtables, all Perſons teaching School, or reading to Pupils in Univerſities, Heads of Colleges, &c. ſhall take the Oaths hereafter mentioned, *viz.*

I A. B. *do ſincerely promiſe and ſwear*, &c.
I A. B. *do ſwear, that I do from my Heart abhor*, &c.
I A. B. *do truly and ſincerely acknowledge*, &c.

All which ſee in the Beginning of this Treatiſe, *p.* 8, and 9.

N. B. By Stat. 7 & 8 *W.* 3. *c.* 24. it is a *Præmunire* for any Lawyer to practice after 25 *May*, 1696, not having before taken the Oaths, and made and ſubſcribed this Declaration.

I A. B. *do declare, that I do believe that there is not any Tranſubſtantiation in the Sacrament of the Lord's Supper, or in the Element of Bread and Wine, at or after the Conſecration thereof, by any Perſon whatſoever.*

1 Geo. 1. c. 13.

By 1 *Geo.* 1. *c.* 13. aforeſaid, all Perſons, on taking the ſaid Oaths, muſt ſubſcribe their Names, or make their Mark, and all Perſons at Eighteen Years of Age may be offered the ſaid Oaths. All Perſons within

Three Months after taking a Place or Buſineſs upon them, muſt take the Oaths at *Weſtminſter* or Quarter-Seſſions. Not to extend to Perſons beyond Sea, provided taken within three Months after Return; for Neglect or Refuſal, forfeit their Office or Employment. Any acting after ſuch Neglect, or, &c. on Conviction, ſhall be diſabled to ſue, or be Guardian, Executor, &c. and uncapable of any Legacy, &c. or to vote at Elections, beſides the Sum of 500 *l.* to him who will ſue for the ſame at Seſſions or *Weſtminſter*; 2 *s.* for adminiſtring the Oath. Two Juſtices, or Perſons eſpecially commiſſioned by his Majeſty, &c. may tender the Oaths to any ſuſpected Perſon to be dangerous or diſaffected, &c. Refuſal of taking the Oaths muſt be certified to Quarter-Seſſions, &c. and there recorded and certified into Chancery or King's Bench; ſuch Perſon ſhall be adjudged a Popiſh Recuſant Convict, and to be proceeded againſt as ſuch. Two Juſtices, or, &c. may ſummon any Perſon to appear before them at a certain Day and Time, to take the Oaths. Perſons ſo ſummoned refuſing, Proof on Oath of ſuch Summons being ſerved, Juſtices muſt certify the ſame to next Quarter-Seſſions to be entred as aforeſaid. Perſons neglecting to take the Oaths at Quarter-Seſſions, the Names of the Perſons ſo certified being publickly read at the ſaid Seſſions, after that ſuch ſhall be adjudged Popiſh Recuſants Convict, and be proceeded againſt as ſuch, as before. *See Penalty on Heads of Colleges neglecting to take ſuch Oaths*, &c. Perſons diſabled recapacitated to enjoy again ſuch Places, &c. upon taking the Oaths, unleſs ſuch Places, &c. are diſpoſed of. Peers and Commoners in Parliament muſt take the Oaths, and on Neglect muſt ſuffer as before.

Exceptions for Offices of Inheritance where Perſons concerned appoint a Deputy, not to extend to the Office of Tithingman, Overſeer of the Poor, Churchwardens, Surveyors, or any the like inferior Civil Office, or to Game-keepers, Park-keepers, &c. Oaths in this Act to be taken in lieu of former Oaths. Perſons having Places in *Ireland* may take the Oaths in *Great Britain*, to qualify themſelves to continue or enter on ſuch Places, before one of the Barons of the Exchequer.

By 5 & 6 *W.* & *M.* *cap.* 11. Every Contributor having an Annuity for Life, or Lives, &c. and his or her Executors, &c. demanding Money, muſt either produce a Certificate of the Life of the Nominee, 5 & 6 W. & M. cap. 11.

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By 5 & 6 *W. & M. cap.* 11. Every Contributor having an Annuity for Life, or Lives, &c. and his or her Executors, &c. demanding Money, muſt either produce a Certificate of the Life of the Nominee, 5 & 6 W. & M. cap. 11.

ſigned by the Miniſter or Churchwardens of the Pariſh.

Or make Oath of the Life of ſuch Nominee, upon the Day of Payment, before one or more Juſtices of the County, City, or Town where ſuch Perſon, at the Time of the making Oath, ſhall reſide. Diſſenters are bound to take the Oaths above-mentioned, and to ſubſcribe the Declaration mention'd 30 *Car.* 2. *c.* 1.

Juſtices in Seſſions are to tender and adminiſter the Oaths to Perſons who ſhall offer themſelves.

Thoſe Diſſenters who ſcruple taking any Oaths, muſt make and ſubſcribe a Declaration of Fidelity, and likewiſe a Profeſſion of their Belief. 1 *W. & M. c.* 18.

The Declaration of Fidelity.

1 Geo. 1. c. 6. I A. B. *do ſolemnly and ſincerely promiſe and declare, that I will be true and faithful to* K. George, *and I do ſolemnly, ſincerely, and truly profeſs, teſtify and declare, that I do from my Heart abhor, deteſt and renounce, as impious and heretical, that wicked Doctrine and Poſition, that Princes excommunicated or deprived by the Pope, or any Authority of the See of* Rome, *may be depoſed or murdered by their Subjects, or any other whatſoever; and I do declare, that no foreign Prince, Perſon, Prelate, State, or Potentate, hath or ought to have any Power, Juriſdiction, Superiority, Pre-eminence or Authority, Eccleſiaſtical or Spiritual within this Realm.*

The Profeſſion of Belief.

I A. B. *profeſs Faith in God the Father, and in Jeſus Chriſt the Eternal Son the true God, and the Holy Spirit, one God bleſſed for evermore, and do acknowledge the Holy Scripture of the Old and New Teſtament to be given by divine Inſpiration.*

They muſt likewiſe make and ſubſcribe the Declaration mentioned in the Statute of 30 *Car.* 2. *cap.* 1.

N. B. That the Act made 1 *W. & M. c.* 18. intitled, *An Act for exempting their Majeſties Proteſtant Subjects diſſenting from the Church of* England, *from the Penalties of certain Laws*, does not extend to any Perſon, who by writing or ſpeaking, denies the Trinity.

Any

Any Juſtice of Peace may at any Time require a Diſſenter to make and ſubſcribe the Declarations, and to take the Oaths and Declaration of Fidelity. If he ſcruple the taking any Oath, upon Refuſal may commit him to Priſon without Bail, and certify his Name in the next Seſſions where he reſides.

Any Juſtice may at any Time require a Diſſenter to make and ſubſcribe the Declarations, And if he refuſe, how puniſhed.

If the Perſon committed ſhall, upon a ſecond Tender at the Seſſions, refuſe, &c. it ſhall be recorded, and he ſhall then be taken for a Popiſh Recuſant Convict.

By Stat. 7 & 8 *W* 3 *c.* 24. the ſolemn Affirmation of the Quakers is to go for an Oath; as, that *I* A. B. *do declare in the Preſence of Almighty God the Witneſs of the Truth of what I ſay*, &c. But by the Stat. of 8 *Geo* 1. *c.* 6. this is altered into this Form, *viz.* *I* A. B. *do ſolemnly, ſincerely and truly declare and affirm*, &c. And if what he affirms be falſe, he is liable to the ſame Puniſhment as other Perſons in Caſes of Perjury. But no Quaker ſhall be permitted to give Evidence in any criminal Cauſe by Affirmation, or ſerve on Juries, or bear any Office or Place of Profit in the Government.

Quakers Affirmation.

An Offender ſhall not be examined upon Oath; *nemo tenetur prodere ſeipſum*; but in Caſes of Felony the Information of Witneſſes ought to be on Oath; otherwiſe it cannot be given in Evidence. *Cro.* 193. *Dalt.* 411.

Oath of being robbed, &c. may be taken by a Juſtice of Peace out of the County. 1 *Cro.* 213.

Quære, If Juſtices of Peace may examine upon Oath Sureties of their Sufficiency: Juſtices of Peace in their Seſſions may do it. *Dalt.* 275. *Cro.* 195.

Oath may be required of a Buyer of Horſe ſtolen, what Money he paid, that the Right Owner, upon paying it, may have his Horſe again. 31 *Eliz.* *c.* 12.

By Stat. 13 & 14 *Car.* 2. *c.* 1. No Perſon may maintain that the Taking of an Oath in any Caſe whatſoever (tho' before a lawful Magiſtrate) is unlawful, and contrary to the Word of God; nor may wilfully refuſe to take an Oath by the Laws of the Land, being duly tendred; nor may perſwade any other to forbear the Taking of the ſame ſo tendred; nor go about by Printing, Writing, or otherwiſe, to maintain that the Taking of an Oath in any Caſe whatever is unlawful, upon the Penalty of five Pounds for the firſt Offence, as in the Caſe of Quakers.

No Perſon to ſcruple to take an Oath.

N. B. Quakers are exempted from the Penalties of this Act, *per* 1 *W.* & *M.* *c.* 18.

No Eccleſiaſtical Judge or Officer may now impoſe the Oath *ex Officio*, or any ſuch like Oath, upon any one at this Day. 13 *Car.* 2. *c.* 12.

Oath ex Officio aboliſhed.

Perjury is cognizable in the Seſſions by 5 *Eliz. cap.* 9.

How the Oaths are to be tendred.

It has been made a *Quære*, Whether, when the Oaths are tendred to make a Man a Refuſer, they ſhould not be formally tendred, *viz.* by having the Oath and the Bible before him. And it ſeems therefore, that if one authorized to give it ſhall only ask one bound to take, whether he will take it, and not tender the Book to take it, that this is not ſufficient; and *quære*, if he ſhould not have Time to read it, or to hear it read.

Two Juſtices to adminiſter an Oath to the returning Officer of Poll-Books.

The two next Juſtices (*Quorum unus*) are to adminiſter an Oath to the Sheriff, or Returning Officer, upon his delivering over to the Clerk of the Peace the Poll-Books of the Election of Knights of the Shire within 20 Days after the Election, that he has delivered over all the ſaid Books without Embezilment or Alteration; or where there are more Clerks of the Peace than one, the original Books to one, and atteſted Copies to the reſt. 10 *Ann. c.* 23.

A Certificate for one who hath taken the Oaths, and ſubſcribed the Declaration, 1 *W. & M. c.* 8.

Middl. ſſ. THESE *are to certify, that* J. L. *of the Pariſh of* C. *in the County aforeſaid, Eſq; came before His Majeſty's Juſtices of the Peace at the Seſſions held at* H. *&c. on* Thurſday, *&c. and then and there, before the ſaid Juſtices at the ſaid Seſſions, did take the Oaths mentioned in a Statute made in the firſt Year of the Reign of the late King* William *and Queen* Mary, *intitled,* An Act for abrogating the Oaths of Allegiance and Supremacy, and appointing other Oaths; *and did likewiſe then and there make and ſubſcribe the Declaration mentioned in a Statute made in the* 25*th Year of the Reign of the late King* Charles *the Second, intitled,* An Act for preventing Dangers which may happen from Popiſh Recuſants; *and that what he did then and there concerning the ſame is regiſter'd, according to the Direction of the Act firſt above mentioned.*

1 W. & M. c. 8.

Signed, *&c.* Dated, *&c.*

C. D. *Cler. Pa.*

For all Sorts of Forms of Oaths, ſee the Book of Oaths, and *Dalton*'s Country Juſtice of Peace.

For

For the Oath of a High-Sheriff and Under-Sheriff, *vid. poſtea* Title Sheriff.

Here follow the Forms of ſome Oaths, which ſome way relate to the Office of a Juſtice of Peace.

The Oath to be taken by the Clerk of the Peace in open Seſſions, before he enters upon his Office.

I A. B. *do ſwear, that I have not nor will not pay any Sum or Sums of Money, or other Reward whatever, nor given any Bond or other Aſſurance to pay any Money, Fee or Profit, directly or indirectly, to any Perſon or Perſons whomſoever, for the Nomination and Appointment of me to be Clerk of the Peace for this County.* 1 W. & M. c. 21.

So help me God.

The Oath of a Coroner.

YOU *do ſwear that you well and truly ſhall ſerve our Sovereign Lord the King, and his Liege People, in the Office of a Coroner, and as one of his Majeſty's Coroners of this County of* K. *and therein you ſhall diligently and truly do and accompliſh all and every Thing and Things appertaining to your Office, after the beſt of your Underſtanding, Wit and Power, both for the King's Profit and the Good of the Inhabitants within the ſaid County, taking ſuch Fees as you ought to take by the Laws and Statutes of this Realm, and no otherwiſe.*

So help you God, *&c.*

The Oath of a Commiſſioner of Sewers.

YOU *ſhall ſwear, that you, to your Underſtanding, Wit, and Power, ſhall truly and indifferently execute the Authority to you given by this Commiſſion of Sewers, without any Favour, Affection, Corruption, Dread or Malice, to be born to any manner of Perſon or Perſons: And, as the Caſe ſhall require, you ſhall conſent and endeavour yourſelf, for your Part, to the beſt of your Knowledge and Power, to the making of ſuch wholſome, juſt, equal and indifferent Laws and Ordinances, as ſhall be made and deviſed by the moſt diſcreet and indifferent Number of your Fellows being in Commiſſion with you, for the due Redreſs, Reformation and Amendment of all and every ſuch Things as are contained and ſpecified in the ſaid Commiſſion: And the ſame Laws and Ordinances,* 32 H. 8. c. 5. 13 & 14 Ed. 6. c. 8. 3 Jac. 1. c. 14. Coke Inſtitut. 4. p. 275.

Ordinances, to your Underſtanding, Wit and Power, cauſe to be put in due Execution, without Favour, Dread, Malice or Affection.

So help you God, &c.

The Oath of an Exciſe man.

(With this muſt be taken the Oaths mention'd in 1 *Gul. & Mar. cap.* 8.)

12 Car. 2. c. 23, 24. Two juſtices who muſt certify (the taking of this Oath) to the next Quarter-Seſſions, there to be recorded.

YOU ſhall ſwear to execute the Office of (name the Place) *truly and faithfully, without Favour or Affection, and ſhall from Time to Time true Account make, and deliver to ſuch Perſon or Perſons as his Majeſty ſhall appoint to receive the ſame; and ſhall take no Fee or Reward for the Execution of the ſaid Office, from any other Perſon than from his Majeſty, or thoſe whom his Majeſty ſhall appoint in that behalf.*

The Oath of a High Conſtable.

YOU ſhall well and truly, according to your Knowledge, Power, and Ability, execute the Office of an High Conſtable ſo long as you ſhall continue in that Office.

The Oath of a High Conſtable upon delivering his Preſentments.

YOU ſhall true Preſentment make to the Grand Inqueſt of all Offences and Miſdemeanors committed or done within your Hundred, and are in any wiſe come to your Knowledge, and belong to you now to preſent without Concealment.

So help you God, &c.

The Oath of a Petty Conſtable.

YOU ſhall ſwear, that you ſhall well and truly execute the Office of a Conſtable (or Borſholder) for the Pariſh of A. for this next Year, (or half a Year, as the Caſe is) and until another be ſworn in your Room, or you ſhall be legally diſcharged thereof.

So help you God, &c.

The

The Oath of a Grand Inquest.

YOU *shall diligently inquire, and true Presentment make, of all such Matters, Articles and Things, as shall be given you in Charge, as also of all other Matters and Things as shall come to your Knowledge, touching this present Service; his Majesty's Counsel, your Fellows and your own, you shall keep secret: You shall present no Person for Envy, Hatred or Malice; neither shall you leave any one unpresented for Fear, Favour or Affection, Reward or Hopes thereof, but in all Things you shall present the Truth, the whole Truth, and nothing but the Truth, to the best of your Knowledge.*

So help you God, &c.

The Jury's Oath.

THE *same Oath that your Foreman hath sworn to observe, perform and keep on his Part, you do swear to observe, perform and keep on your Part.*

So help you God, &c.

The Oath of those who shall give Evidence upon Bills of Indictment.

THE *Evidence that you shall give to the Grand Inquest upon this Bill of Indictment against* A. B. *shall be the Truth, the whole Truth, and nothing but the Truth.*

So help you God, &c.

The Oath of a Jury-man upon a Traverse.

YOU *shall well and truly try the Issue of this Traverse between our Sovereign Lord the King and* A. B. *and a true Verdict give, according to your Evidence.*

So help you God, &c.

The Oath given to a Jury-man upon Life and Death.

YOU *shall well and truly try, and true Deliverance make, between our Sovereign Lord the King and the Prisoner at the Bar, whom you shall have in Charge, and a true Verdict give, according to your Evidence.*

So help you God, &c.

Every

N. B. Every Juror is to lay his Hand on the Book, and look toward the Priſoner.

The Oath of Witneſſes.

THE Evidence that you and every of you ſhall give to the Court and the Jury, for our Sovereign Lord the King againſt the Priſoner at the Bar, ſhall be the Truth, the whole Truth, and nothing but the Truth.

So help you God, &c.

The Oath given to a Bailiff or Serjeant that attendeth on any Jury or Inqueſt at an Aſſize.

YOU ſhall well and truly keep every Perſon ſworn of this Inqueſt together, in ſome private and convenient Room, without Meat, Drink, Lodging or Fire, Candle excepted: You ſhall not ſuffer any Perſon whatſoever to ſpeak to them, or any of them, until ſuch Time as they be agreed of their Verdict, unleſs it be to ask them whether they be agreed of their Verdict or no, without Leave of the Court.

So help you God, &c.

The Oath of a Jury of Women returned to try whether a Woman convicted, that pleads her Belly, be Quick with Child, or no.

YOU the Fore-Matron of this Inqueſt do ſwear, that you ſhall ſearch and try the Priſoner at the Bar, whether ſhe be with Child of a quick Child, or no, and thereof a true Verdict give, according to the beſt of your Judgment.

So help you God, &c.

To the reſt of the Jury.

THE ſame Oath which A. B. *your Fore-Matron hath taken on her Part, you, and every of you, ſhall well and truly obſerve and keep on your Parts.*

So help you God, &c.

The

The Oath of him who craves the Peace againſt another.

THE Peace which you require againſt A. B. *is not out of any Ill-will or Malice which you bear to him, but merely to preſerve your Life, Houſe, Goods or Chattels, from any bodily Harm or Miſchief, which he by himſelf, or any other by his Procurement, may attempt to do you.*

So help you God, &c.

An Oath to be given upon Examination, or upon Information.

YOU ſhall true Anſwer make to all ſuch Queſtions as ſhall be demanded of you concerning the Beating of A. B. *You ſhall ſpeak the Truth, the whole Truth, and nothing but the Truth.*

So help you God, &c.

The Oath of him that giveth Information.

THE Information that you ſhall give on the Behalf of our Sovereign Lord the King's Majeſty againſt A. B. *ſhall be the Truth, the whole Truth, and nothing but the Truth.*

So help you God, &c.

An Oath upon a Leading Queſtion.

YOU ſhall true Anſwer make to all ſuch Queſtions as ſhall be demanded of you.

So help you God, &c.

An Oath to be taken by all Clerks of the Courts of King's Bench and Common Pleas, Clerks of Aſſize, Clerks of the Peace, Town-Clerks, Clerks of Sewers, Clerks of the Markets, and others to whom it belongeth to make Returns of Eſtreats into the Exchequer.

YOU ſhall ſwear, that theſe Eſtreats, now by you delivered, are truly and carefully made up and examined, and that all Fines, Iſſues, Amerciaments, Recognizances and For-

22 & 23 Car. 2. c. 22.
4 & 5 Gul. & Mar. c. 24.

Forfeitures, which were ſet, loſt, impoſed or forfeited, and in right and due Courſe of Law, ought to be eſtreated in the Court of Exchequer, are, to the beſt of your Knowledge and Underſtanding, therein contained: And that in the ſame Eſtreats are alſo contained and expreſſed all ſuch Fines as have been paid into the Court, from which the ſaid Eſtreats are made, without any wilful or fraudulent Diſcharge, Omiſſion, Miſnomer or Defect whatſoever.

So help you God, &c.

An Oath to be adminiſtred by the next Juſtice of Peace, (Judge-Advocate or his Deputy) to every Officer preſent at the Trial of Offenders by Courts Martial, (where the Offence may be puniſhed by Death) before any Proceeding be had thereupon.

YOU ſhall well and truly try and determine, according to your Evidence, the Matter now before you, between our Sovereign Lord the King's Majeſty and the Priſoner to be tried.

So help you God, &c.

Orchards.

37 H. 8. c. 6. BY Stat. 37 *Hen.* 8. *cap.* 6. they who bark Fruit-Trees forfeit treble Damages to the Party grieved, in an Action of Treſpaſs.

43 Eliz. c. 7. By Stat. 43 *Eliz. c.* 7. Perſons unlawfully cutting and taking Corn growing, robbing Orchards, digging up or taking away Fruit-Trees, breaking of Hedges, Pales or other Fences, cutting or ſpoiling of Woods, Underwoods, or the like Offences; and the Acceſſaries thereunto being lawfully convicted by Confeſſion,

15 Car. 2. c 2. or one Witneſs on Oath, before one Juſtice, ſhall pay to the Perſon grieved, for the firſt Offence, ſuch Damages as the Juſtices ſhall award; if not able to pay, then to be whipp'd by the Conſtable; and for every other Offence to be whipp'd. Conſtable neglecting his Duty, to be committed till he does it: In Juſtice's own Caſe, he muſt aſſociate ſome other Juſtice with himſelf.

The Proſecution muſt be in ſix Weeks by 15 *Car.* 2. *c.* 2.

A War-

A Warrant againſt a Robber of an Orchard.

Eſſex, ſſ. *WHereas it hath been duly proved before me* R. B. *Eſq; one of his Majeſty's Juſtices of the Peace for the County aforeſaid, That* T. P. *of*, &c. *hath within ſix Weeks laſt paſt, robbed the Orchard of*, &c. (or as the Caſe is) *contrary to the Laws in that Caſe made and provided: I do therefore hereby* * *appoint the ſaid* T. P. *within five Days after Notice hereof, to pay unto the ſaid* J. S. 9 s. *in Recompence and Satisfaction for the Wrong ſo done, as aforeſaid: And if the ſaid* T. P. *ſhall not pay the ſame, that then you inform me thereof, that ſuch farther Proceedings may be had againſt him for the ſaid Offence, as the Law requireth: And hereof fail not.* Given, &c.

* If the Juſtice doth not think him able, he may order him to be whipped. Like Puniſhment for an Acceſſary.

Upon Non-payment to be whipped.

Suſſex, ſſ. *WHereas it hath been duly proved before me* R. B. *Eſq; being a Juſtice of the Peace for the County aforeſaid, That*, &c. (as in the former Warrant) *And whereas the ſaid* T. P. *hath not paid or diſcharged the ſaid* J. S. *for the Damages done to him, the Sum of* 9 s. *by me appointed for him to pay: Therefore I do hereby Order, that the ſaid* T. P. *be forthwith committed to the ſaid Conſtable of*, &c. *to be whipped, which you the ſaid Conſtable are hereby required to do, or cauſe to be done, at your Peril.* Given under my Hand, &c.

Overſeers of the Poor. See Poor.

Outlawry.

Outlawry what.

THIS is when a *Capias, Alias & Pluries* have been awarded againſt an Offender who hath not appeared, but the Sheriff returns a *non eſt inventus*; then there is a Writ of Exigent made out, directed to the Sheriff, to call him in five ſucceſſive County-Courts which are held Monthly, requiring him to appear, (but the County-Courts are held oftner in *London*) and if he do not, then he is Outlawed or Exlex, that is, deprived of the Law, and out of the King's Protection.

When a Man is ſaid to be Outlawed.

Which was ſo great a Puniſhment, that in old Times he was ſaid to have *Caput Lupinum*, and might have been killed by any who met him; and this continued till

Outlaw anciently might be killed by any Body.

till the Time of K. *Edward* 3. when it was made lawful for none but only the Sheriff to kill him, nor he neither, unleſs he had a Warrant ſo to do.

Not ſo now.

But now Outlawries are become frequent in Perſonal Actions; the Effect of which is, *viz.* Forfeiture of Goods and Chattels to the King; and if for Felony, then it is Forfeiture of his Lands, in Fee or for Life, and his Goods, *&c.*

One outlawed for Felony may be taken in Execution at the Suit of a Creditor.

When a Man is outlawed for Felony, being attainted by the Outlawry, his Goods are forfeited to the King, and his Body at his Diſpoſal; and therefore it was a Queſtion, Whether ſuch an Outlaw might be taken in Execution at the Suit of a Creditor: But it was held that he is liable to ſuch Execution; but the Sheriff may chuſe whether he will execute it or not; and that if the Law ſhould be otherwiſe, then the Party might take Advantage of his own Default; for he might ſuffer himſelf to be outlawed, and then get a Pardon and deceive all his Creditors. *Moor* 179, 753. *Owen* 69.

Lands forfeited and given away, reſtored on Reverſal of the Outlawry.

A Man who held Lands of the King, was outlawed for Murder; the King ſeiſed the Lands, and gave them to another, and then the Outlawry was reverſed; and the Queſtion was, Whether the Perſon might re-enter, or firſt Petition to the King? And it was held that he might re-enter upon the Grantee, becauſe there was no Record of Attainder to put him on his Petition. 1 *Cro.* 464.

Outlawry revers'd by Writ of Error.

Error was brought to reverſe an Outlawry for Murder; the Error aſſigned was, that *tempore promulgationis utlagariæ & diu antea & poſt*, he was beyond Sea. It ſhould have been *tempore* of the Exigent awarded; for if he depart after that Time, and is then outlawed, he ſhall never reverſe that Outlawry, becauſe he fled from Juſtice on ſet Purpoſe; but the Attorney General confeſſing the Error, it was reverſed. 1 *Cro.* 464.

Panels of Juries.

Panels may be reformed by Juſtices.

ALL Panels of Juries to be returned, which be not at the Suit of any Party, to be made by any Sheriff, *&c.* before Juſtices of Gaol-Delivery, or Juſtices of Peace (*Quor.* 1.) in their open Seſſions, to enquire for the King, ſhall be reformed by Juſtices at

at their Diſcretion; 20 *l.* Penalty for Sheriff, *&c.* not returning the Panels ſo reformed, to the King and Proſecutor. 3 H. 8. *c.* 12.

Pamphlets and News-Papers.

The Stamp-Duties upon Pamphlets.

BY Statute 10 *Ann. c.* 19. All Papers called Pamphlets, ſhall for every Half Sheet pay a Halfpenny; if larger than a Half Sheet a Penny, and if larger than a Whole Sheet, and not ſix Sheets in Octavo, or in a leſs Page, or not exceeding twelve Sheets in Quarto, or twenty Sheets in Folio, 2 *s.* Sterling for every Sheet of Paper in one printed Copy; and for every Advertiſement in the *London Gazette*, or other printed Paper made weekly Publick, one Shilling. And they are to be ſtamped accordingly.

How Offences may be heard and determined.

Offences in printing, ſelling, or expoſing to Sale any Pamphlet, *&c.* againſt this Act, may be heard and determined by two or more Juſtices within their Juriſdiction. At any Time within three Months after the Offence, upon Complaint made, they may ſummon the Offender and Witneſſes, and may examine them on Oath; or for not appearing, upon Proof of Notice given, may proceed, though the Offender doth not appear, and give Judgment. And if convicted either upon View of the Juſtice, or upon ſuch Information, may iſſue Warrants to levy the Penalty of 10 *l.* on the Goods of the Offender by Diſtreſs and Sale, if not redeemed within ſix Days; and if ſuch Diſtreſs cannot be had, may commit him 'till the Penalty is paid.

Appeal to Q. Seſſions.

Thoſe who are grieved may appeal to the next Quarter-Seſſions, who may examine Witneſſes upon Oath, and finally determine, and may then iſſue Warrants to levy the Penalty.

The Penalty may be mitigated.

The Penalty may be mitigated by the Juſtices; but then the Officers and Informers muſt be allowed their reaſonable Coſts and Charges over and above the ſaid Mitigation, and ſo as the Mitigation muſt not be leſs than a fourth Part of the Fine, over and above the ſaid Coſts and Charges.

Perſons ſued for putting the Act in Execution, may plead the General Iſſue, and give this Act and any Special Matter in Evidence; and if he recover ſhall have treble Coſts.

Penalty of not carrying Pamphlets to be ſtamped.

Printing a Pamphlet above one Sheet, publiſhed within the weekly Bills of Mortality, and not carrying it within ſix Days to the head Office for ſtamping; and if printed elſewhere, and not brought to the head Collector of the Stamp-Duties, within fourteen Days, the Printer and Publiſher ſhall loſe the Profit of the Copy of ſuch Pamphlet for which the Duty is not paid, and ſhall forfeit 20 *l.* with full Coſts.

If the Printer's or Publiſher's Name is not printed thereon, the Penalty is likewiſe 20 *l.*

One Moiety of theſe Penalties is to the Crown, the other to the Informer.

A Fetch of the News-Writers, &c.

But ſome News-Writers taking Advantage of the Paragraph in the Act 10 *Annæ*, *c.* 19. wherein for all Pamphlets larger than one whole Sheet, and not exceeding twenty Sheets in Folio 2 *s.* for every Sheet of Paper in one printed Copy, and no more was to be paid, contrived their News-Papers ſo as they took up one Whole Sheet, and one Half Sheet, and no more; by which means, they for many Years, paid only 3 *s.* for each whole Impreſſion of their News-Papers. Which being taken Notice of in Parliament, a Clauſe was inſerted in a Stat. made 11 *Geo.* 1. whereby all Journals, Mercuries, and News-Papers printed on one Sheet and Half a Sheet of Paper, ſhall not for the future be deemed or taken as Pamphlets, to be entred, and pay only 3 *s.* for each Impreſſion thereof; but there ſhall be paid for every Sheet of Paper on which any Journal, Mercury, or other News-Papers whatſoever ſhall be printed, a Duty of one Penny; and for every Half Sheet thereof one Half-penny, during the Term mentioned in the Act 10 *Ann. c.* 19. to be levied in the ſame Manner, and ſubject to the ſame Penalties, *&c.* as in the ſaid Act of 10 *Ann. c.* 19. or any other Act relating to thoſe Duties, is contained.

A Warrant to levy the Penalty by 10 *Ann. cap.* 19.

10 Ann. c. 19.

Eſſex, ſſ. *WHereas Complaint hath been made unto us whoſe Names are ſubſcribed, two of His Majeſty's Juſtices of Peace for the ſaid County, that* R. G. *of*, &c. *did on the* 19*th of* Auguſt *laſt paſt at* D. *in the ſaid County, expoſe to Sale one Sheet of Paper commonly called a Pamphlet, not being ſtamp'd as it ought to be by Law; and the Duty not being paid for the ſame: We thereupon did ſummon the ſaid* R. G. *to appear before us at*, &c.

on

on Wedneſday *the* 20*th of* Aug. *aforeſaid, where he did appear accordingly, and was then and there convicted upon the Oath of* J. S. *of*, &c. *of the ſaid Offence; by Reaſon whereof he hath forfeited* 10 l. *according to the Statute in that Caſe made and provided: Which ſaid Sum of* 10 l. *we did mitigate to* 5 l. *beſides the Sum of* 10 s. *which we did allow to the ſaid* J. S. *for his reaſonable Coſts and Charges in that Behalf: Theſe are therefore to require you forthwith to levy the ſaid Sums of* 5 l. *and* 10 s. *by Diſtreſs of the Goods of the ſaid* R. G. *and if the ſame are not redeemed within ſix Days after the ſaid Diſtreſs taken, that then you ſell the ſame, rendring the Overplus to the ſaid* R. G. *if any ſuch ſhall be, after reaſonable Coſts and Charges firſt deducted; and that you pay* 10 s. *Part thereof to the ſaid* J. S. *and one Moiety of the remaining* 5 l. *to the King, and the other Moiety thereof to the ſaid* J. S. *who firſt informed us of the ſaid Offence.* Given, &c.

Papiſts. See Recuſants.
Partridge. See Game.

Parchment.

COmplaints being made about ſeizing Parchment, may be heard and determined by two Juſtices; but an Appeal lies to Quarter-Seſſions. 5 *W. & M. c.* 21. 8 & 9 *W.* 3. *c.* 6. 4 *Ann. c.* 7. 9 *Ann. c.* 11. 10 *Ann. c.* 13. 12 *Ann. c.* 2.

Two Juſtices to determine Complaints about Parchment.

Pardon.

A Pardon is either { 1. Of Courſe, or, 2. Of Grace.

A Pardon is granted of Courſe, where a Man is convicted of Homicide, *ſe Defendendo*, or by Chance-Medley; for which ſee in Tit. Homicide. Stat. *Glouc. c.* 9.

Pardon of Grace is either { 1. General, or, 2. Special.

By the Law of God, no Recompence was to be taken for the Life of a Murderer, who purpoſely hath committed Murder, but he ſhall ſurely be put

By the Law of God, no Pardon for Murder.

to Death; *Thou ſhalt take him from my very Altar, that he may dye*, ſaith God: *For Blood defileth the Land, and the Land cannot be cleanſed of the Blood that is ſhed therein* (by wilful Murder) *but by the Blood of him who ſhed it.* Num. ch. xxxv. ver. 31, 33.

None can pardon Treaſon, Murder &c. but the King.

None have Authority to Pardon any Treaſon, Murder, or other Felony, or any Acceſſary to the ſame, ſave only the King, it being one of his Royal Prerogatives.

Note; if he which hath a Pardon for Felony, *ita quod ſe bene geſſerit verſus cunctum populum D'ni Regis*, if afterwards he ſhall break the Peace, ſuch is holden for none, but that he may be hanged, notwithſtanding his Pardon. 10 *Ed.* 3. *c.* 3. 3 & 5 *H.* 7. *c.* 7. where one was executed upon this Statute for making an Affray after his Pardon, *Br. Coron.*

One pardoned conditionally, may be hanged afterwards.

One *Cole* was convicted of Burglary, and pardoned, *ita quod bene ſe geſſerit* towards all People: Afterwards he broke the Peace by beating another Man; and this being ſuggeſted to the Court, Execution was prayed againſt him; and the Clerk of the Crown informed the Court that one *Whiddon* was hanged in the Queen's Reign for the ſame Cauſe, after a Pardon; but it is not ſaid what Rule was made in the principal Caſe.

What is a general Pardon.

A general Pardon is that, which is given in Parliament to all Men generally, or with Exceptions to ſome few Perſons. And of this general Pardon the Court ought *ex officio*, and of Duty, both to take Notice and give Allowance, tho' the Party neither plead it, nor will accept the Benefit of it. But if the Pardon make ſpecial Exception of ſome Perſons, then muſt the Priſoner alledge that he is none of thoſe who be excepted, unleſs the Act it ſelf does ſay that he ſhall take Advantage by it, without any ſuch pleading. 11 *H.* 4. 39. *Stanf.* 103. *Lamb.* 536. *Hob.* 67. 3 *Inſt.* 233.

A Servant who had killed his Maſter, was indicted for Murder without the Word *proditorie*, and was thereupon arraigned and found Guilty. But becauſe the Offence was really Petit Treaſon, and Petit Treaſon was then pardoned by the Parliament (5 *Eliz.*) tho' Murder were therein excepted, Juſtice *Welſh* thought fit to reprieve the Priſoner, without giving Judgment upon him. *Dyer* 235. *Lamb.* 536.

Caſes on general Pardon.

A Man ſtruck another in *Feb.* (13 *Eliz.*) whereof he died in *June* next following, in which mean while all Felonies, Offences, Injuries, and Miſdemeaners, were pardoned by Parliament; and he was diſcharged

by that Pardon, becauſe the Stroke was the Offence againſt the Queen; and that was paſt and pardoned, though a Death did afterwards enſue upon it. *Plowd.* 421. *Lamb.* 537.

One that had committed Manſlaughter, was indicted of Murder, and thereupon Outlawed; afterward the Parliament pardoneth all Offences, *&c.* except Perſons Outlawed or Attainted of Murder; the Party reverſeth the Outlawry, and then is arraigned of Manſlaughter; and it was much doubted whether he ſhould be diſcharged by the Pardon; becauſe Perſons Outlawed were excepted: Whereas if the Offences only had been excepted, it would have made no great Queſtion. 29 *Eliz. Crompt. Lamb.* 537.

What a Special Pardon.

A Special Pardon ought to be pleaded under the great Seal of *Great Britain*; for that Authority, which ſome Subjects in ancient Time had to grant Pardon, is reſumed by the Statute 27 *H.* 8. *c.* 24.

Ought to have a Writ of Allowance, unleſs a Clauſe of Non obſtante inſerted therein.

And with this Pardon the Party ought to bring a Writ of Allowance, teſtifying that he had found Sureties for his good Port, according to the Statute 10 *Ed.* 3. *c.* 2. Howbeit that Matter is many Times diſpenſed with by Means of a *Non obſtante*, that may be put into the Pardon. *Plowd.* 502. *Lamb.* 537.

Caſes on Special Pardon.

If the Pardon do agree with the Indictment, as well in the Name, Sirname and Addition of the Party, as alſo in the Point of the Offence that is to be pardoned; then is there nothing to be ſaid againſt it. But if the Pardon be of all Felonies, that will not diſcharge him of Petit Treaſon, nor Murder at this Day, (except it contain them in ſpecial Words) although at the Common Law before the Statute 13 *Ri.* 2. *Stat.* 2. *c.* 1. ſuch a Pardon was available enough for them, *Dalt.* 348. *Cro.* 21. 6 *Co.* 13. but it is good for Acceſſaries both before and after.

9 Ed. 4. 29.

Neither is ſuch a Pardon ſufficient to ſave the Life of a Man that is attainted of Felony, unleſs it have Words to pardon the Attainder and Execution. *Cro.* 115. *Dalt.* 348. 6 *Co.* 13. 9 *Ed.* 4. 29. No more than a Pardon of the Attainder and Execution will deliver him, without Words to pardon the Felony it ſelf. 8 *H.* 4. 22. So where the Party is abjured for the Death of a Man, the Pardon muſt of Neceſſity carry Words of Abjuration. *Fitz.* 124. *Lamb.* 537.

If the King do Pardon a Gaoler, the Eſcapes of Priſoners being in his Cuſtody for Felony or Treaſon, that ſhall extend to negligent Eſcapes only, and to none other. *Fitz.* 37. So if he pardon two Men all

Felonies done by them or any of them, that will not ſerve them apart; becauſe the firſt Words be joint, and not ſeveral. Whereas all Felonies be of themſelves ſeveral. 22 *Ed.* 4. 7. For in all theſe and the like Caſes, however the Favour of Life may require a large Interpretation; yet foraſmuch as the Offence is againſt Law, the Grace and Diſpenſation of the Prince may not be ſtrained beyond the Words. *Lamb.* 537. Pardons how to be allowed. *Cro. El.* 814. 2 *Cro.* 495.

A Pardon for not repairing a Bridge or Highway, may diſcharge the Fine; but the Offence remains, for which the Party is chargeable at the Suit of a Subject. 12 *Co* 30.

When there is no Day in Court to plead a Pardon, the Court will not allow it. 3 *Cro.* 4.

Priſoner pleadeth a Pardon, the Juſtices of Peace, in the Abſence of the King's Attorney, may join Iſſue, that he is one of the Perſons excepted. *Lamb.* 540. *Stamf.* 103.

For General Pardons have now ſo many Qualifications, Reſtrictions and Exceptions, both as to Offences and Perſons, that the Court cannot take Notice of them without being pleaded; and in the Plea the Defendant muſt aver, that he is none of the Perſons excepted; a Form of which Plea you may ſee. 3 *Inſt.* 234.

Offence muſt be ſpecified in the Pardon.

By Statute 13 *Rich.* 2. *cap.* 1. 'tis enacted, That the Offence ſhall be ſpecified in the Pardon, otherwiſe it ſhall not be allowed; and ſince that Time it hath been held, that a General Pardon for Murders or Robberies is not good, without reciting the Indictment and Verdict in the Pardon it ſelf. *Moor* 752. *Sid.* 366. 430.

Mr. Howard's Caſe.

Mr. *Howard* was convicted of Murder, and being brought to the Bar, pleaded the King's Pardon, in which all the Proceedings on the Indictment were recited; and that the King pardoned the Killing and Felony, but the Word *Murdrum* was not in the Pardon, and there was no Writ of Allowance; whereupon Mr. *Howard* was adviſed to get a better Pardon, otherwiſe this might be repealed by *Scire Facias* ſeven Years hence, and he might be executed; and afterwards he had a better Pardon and Writ of Allowance. *Raim.* 13.

No Appeal will lie for Murder after a Pardon for Treaſon.

Anno 31 *Hen.* 8. it was made Treaſon for a Wife to poiſon her Husband; and ſoon after a Woman poiſon'd her Husband, and was pardon'd; her Son brought an Appeal of Murder; and it was adjudg'd it did not lie, becauſe

becauſe they were two different Offences; and the Offence being made Treaſon, could not be puniſh'd as Murder. *Dyer* 50.

In Caſes of Treaſon the Court may allow a Pardon without a Writ of Allowance, but not ſo in Felony; and therefore, where a particular Pardon is pleaded, it muſt be *ſub Magno Sigillo*, and it ought to have a Writ of Allowance; unleſs there be inſerted a Clauſe of *Non Obſtante*, for that diſpenſes with that Writ. *Cro. Eliz.* 314.

Where an Intereſt is veſted, Words of Reſtitution are neceſſary in a Pardon. *Sid.* 168.

Sir Walter Raleigh's Caſe.

Sir *Walter Raleigh* was attainted of Treaſon, 1 *Ja.* 1. and kept Priſoner twelve Years, and then the King gave him a Commiſſion to make an Expedition to *Gayana*, and Authority to execute Martial Law, and Power over the Lives of other Men; he went thither, and return'd unſucceſsful; and on his Return was brought to the Bar, and had Sentence and Execution upon the Attainder; tho' he inſiſted that his Commiſſion, giving him Power over the Lives of other Men, was a Pardon by Implication; but the Court anſwer'd, that no Man muſt be pardoned but by expreſs Words, and not by Implication. 2 *Cro.* 495.

A Pardon takes away the Guilt as well as Puniſhment.

Not only the Puniſhment, but the very Guilt is taken away by a Pardon; ſo that a Man is reſtored to his Credit, and enabled to be a Witneſs, tho' he hath been convicted of Felony; but it ſeems otherwiſe if the Conviction had been for Perjury, on 5 *Eliz. c.* 9. 1 *Ventris* 349.

Burnt in the Hand in Nature of a Pardon.

Being Burnt in the Hand upon a Conviction of Felony, is in Nature of a Pardon; for by this Puniſhment he is cleared of the Offence, and is become a lawful Witneſs. *Raym.* 370.

Nothing veſts in the King till Inquiſition found, and therefore a Pardon before an Inquiſition found diſcharges all Forfeitures. 2 *Mod.* 53.

Nothing veſts in the King before Inquiſition taken.

But where once an Intereſt is veſted, a Pardon will have no Effect upon the Goods forfeited, without ſome Words of Reſtitution. *Sid.* 168.

Pardon no Bar to an Appeal.

A Pardon is no Bar to an Appeal, nor to an Execution, if the Offender be attainted and pardoned of Felony only.

2 & 3 Ann. c. 19.

By a Statute made 2 & 3 *Ann. c.* 19. as ſoon as the Judge receives a Warrant under the Sign Manual of the King for a Pardon, he may direct his Warrant to the Sheriff or Gaoler, directing the immediate Delivery of ſuch Priſoner out of Cuſtody to ſuch Officer as he ſhall

be liſted under, to ſerve the King either in the Army or Navy; and the Pardon when paſſed ſhall be entred and enrolled.

The King can pardon Murder, &c. proved.

About the latter End of King *Charles* the Second's Reign, in the Caſe of one *Parſons* who had a Pardon for Murder, it was argued by Counſel in *B. R.* that the King could not pardon Murder; and becauſe it could not be proved by the Law of *England*, therefore Recourſe was had to the Scripture, which ſays, *He who ſheddeth Man's Blood, by Man ſhall his Blood be ſhed.* Gen. ix. 6. But this Text muſt be taken in a limited Senſe, and not as univerſally binding, no more than that of *Thou ſhalt take no Satisfaction for the Life of a Murderer; who is guilty of Death, he ſhall ſurely be put to Death.* For beſides the Caſe of common Executions and many others, wherein it is not only lawful, but abſolutely neceſſary to ſhed Man's Blood, it's plain this Precept was Part of the Judicial Law, and, as ſuch, binding only on the *Jews*; but the Ceremonial and Judicial Laws being abrogated ever ſince the Death of Chriſt, or, at fartheſt, the Deſtruction of *Jeruſalem* by the *Romans*, when the Jewiſh Commonwealth and Government were totally ruined and deſtroyed, the Obligation of that Law has ceaſed ever ſince.

Arguments for it.

'Tis true, God ſaith, that *a Murderer ſhall ſurely be put to Death*; and 'tis as true that, in another Place, he ſays, that *whoſoever doth any Work on the Sabbath, he ſhall ſurely be put to Death*; and yet no Man will affirm, that the King cannot pardon thoſe who work on the Sabbath.

'Tis therefore certain, that neither the divine nor human Laws hinders the King from pardoning Murder; and it may often happen that (upon due Conſideration of the Perſon, Times and other Circumſtances) a Pardon may be as effectual to attain the good Ends intended by a Puniſhment, as any rigorous Execution of it might have been; and in ſuch Caſes the King is the ſupreme Judge.

Parliament.

Levying Wages for Members of Parliament.

THE Levying of the Expences of Members coming to Parliament, *viz.* the Knights 4 *s.* and the Burgeſſes 2 *s.* a Day, hath been from old Time; for I find ſo long ago as 12 *R.* 2. *c.* 12. an Act, that the Levying the Expences of Knights coming to Parliament ſhould be made as in Times paſt. By

By Stat. 23 *H.* 6. *c.* 11. the Sheriff in the next County Court, after he hath received the Writ, ſhall make Proclamation, *&c.* and then in full County ſhall aſſeſs every Hundred by it ſelf, and every Town in each Hundred by it ſelf; and the Sheriff or other Officer who levies more than is ſo aſſeſſed, ſhall forfeit 20 *l.* to the King, and 10 *l.* to the Proſecutor. To be aſſeſſed by the Sheriff.

Juſtices of both Benches, Juſtices of Aſſize, Gaol-Delivery and of the Peace, have Power to hear and determine theſe Abuſes, as well at the Suit of the King as for the Party.

By Stat. 35 *H.* 8. *c.* 11. two Juſtices in each of the twelve Counties in *Wales* and in *Monmouthſhire*, may tax every City and Borough therein towards the Wages of the Members of Parliament, *&c.* In Wales by two Juſtices.

By Stat. 9. *Ann. c.* 5. the Oath appointed to be taken by Candidates may be adminiſtred by the Sheriff or Under-Sheriff, or other Officer to whom it belongs to take the Poll or make the Return, or by any two Juſtices of the Peace, who are to certify the ſame into the Chancery or *B. R.* within three Months afterwards, under the Penalty of One Hundred Pounds; one Moiety to the King, and the other to the Informer, for which no Fee ſhall be taken but 1 *s.* for the Oath, 2 *s.* for the Certificate, and 2 *s.* for filing it, under the Penalty of 20 *l.* Two Juſtices may adminiſter the Oath to Candidates.

Every Candidate ſhall, at the reaſonable Requeſt of any other Candidate, at the Time of the Election, or of two or more Perſons who have a Right to vote, take the following Oath.

The Candidate's Oath.

I A. B. *do ſwear, that I truly and* bona fide *have ſuch an Eſtate in Law or Equity to and for my own Uſe and Benefit, of or in Lands, Tenements or Hereditaments (over and above what will ſatisfy and clear all Incumbrances that may affect the ſame) of the annual Value of Six Hundred Pounds above Reprizes, as doth qualify me to be elected and returned to ſerve as a Member for the County of according to the known and true Meaning of the Act of Parliament in that Behalf; and that my ſaid Lands, Tenements, or Hereditaments are lying or being within the Pariſh, Townſhip or Precincts of in the ſaid County of* or, *in the ſeveral Pariſhes, Townſhips, or Precincts of in the County of as the Caſe may be.*

Muſt be a Freehold or Copyhold Eſtate.

Theſe muſt be either Freehold or Copyhold Lands, and the Perſon muſt be entitled to them for Life, or a greater Eſtate; and every Citizen and Burgeſs is to have 300 *l. per Ann.* or his Election ſhall be void.

Act does not extend to a Peer's eldeſt Son, &c.

This Act doth not extend to the eldeſt Son of a Peer, or of a Perſon qualified to ſerve as a Knight of a Shire, to make him uncapable, *&c.* nor to the Univerſities.

A Mortgagee ſhall not be capable, unleſs he hath been in Poſſeſſion ſeven Years before the Election.

By the Statute 10 *Ann. c.* 23. every Freeholder before he is admitted to poll, ſhall, if required by the Candidates, take this Oath.

Freeholder's Oath.

YOU do ſwear, that you are a Freeholder in the County of and have Freehold Lands or Hereditaments, lying or being at in the ſaid County, of the yearly Value of 40 s. *above all Charges payable out of the ſame; and that ſuch Freehold Eſtate hath not been made or granted to you fraudulently, on purpoſe to qualify you to give your Vote, and that the Place of your Abode is at in the ſaid County, and that you have not been polled before at this Election.*

This Oath is to be adminiſted by the Sheriff, Under-Sheriff or ſworn Clerk by him appointed to take the Poll; and the Returning Officer ſhall, within twenty Days after the Election, deliver over to the Clerk of the Peace all the Poll-Books on Oath, made before the two next Juſtices of Peace, *Quorum unus, &c.*

None having Penſions can be choſen, or ſit as a Member.

By Stat. 1 *Geo.* 1. *c.* 56. no Perſon having any Penſion from the Crown, ſhall be capable of being elected a Member of Parliament, or of ſitting or voting as ſuch. In Caſe any ſuch Perſon ſhall preſume to ſit or vote in that Houſe, he forfeits 20 *l.* for every Day he ſhall ſit and vote there, to him who will ſue for the ſame in any of the Courts at *Weſtminſter*, by Action of Debt, with full Coſts of Suit.

Oath to be taken by Electors, &c.

The Stat. 2 *G.* 2. requires an Oath to be taken by Electors, that they have not received, or had any Money, Reward, Gift, Place or Promiſe for their Votes, *&c.* and if they take any Bribe, renders them incapable of voting in any Election, or to hold any Office or Franchiſe, and inflicts a Penalty of 500 *l.* This

Act

Act to be read once a Year at the Quarter-Seſſions, by Order of the Juſtices there.

And a Juſtice of Peace, or in his Abſence, three Electors may adminiſter the Oath (required by this Statute) to returning Officers, that they have received no Money, Reward, Gift, &c. to make any Return.

Partition of Lands.

BY Statute 8 & 9. *W.* 3. *c.* 31. two Juſtices muſt be preſent at the Under-Sheriff's Executing a Writ of Partition, when the High-Sheriff, by Reaſon of Diſtance, Infirmity, or any other Hindrance, cannot be there preſent; and ſuch Partition being made, return'd and fil'd, ſhall ſtand good.

Two Juſtices muſt attend Under-Sheriff in making Partition.

In caſe the High-Sheriff cannot be preſent at Partition, &c. all Juſtices of the Diviſion muſt attend or ſhew Cauſe, on Oath, for being abſent, to be allow'd by Court of, &c. or may be liable to pay Coſts, &c. to Demandant, not above 5 *l.*

This Act at firſt was temporary, but by Stat. 3 & 4 *Ann. cap.* 18. it was made perpetual.

Partridge. See Game.
Party-Walls. See Fire.

Peace. See Good Behaviour.

EVery private Perſon that ſhall be preſent at any Affray, Aſſault or Battery, ought to part them that fight, and may ſtay them 'till their Heat be cooled; but they may not impriſon them, unleſs the one of them be in Peril of Death by ſome Hurt, for then any Man may carry the other to the Gaol, 'till it be known whether the other will live or die. *Lamb.* 131. *Dalt.* 33.

If any Affray, Forcible Entry, or any Thing in Diſturbance of the Peace, be done in the Preſence of a Juſtice of Peace, he may record it, and certify the ſame, and commit the Parties preſently. *Dalt.* 144.

Juſtice may record an Affray done in his Preſence.

If the Juſtice of Peace certify into the K. B. that *A. B.* hath broken the Peace, upon that Certificate, *A. B.* ſhall be there fined, without allowing him any Traverſe. *Dalt.* 144. 2 *Cro.* 132.

Offender fined in B. R. on Juſtice's Certificate.

All

What are Breaches of the Peace.

All Affrays, Aſſaults, injurious and violent Handlings and Battery, Strikings, Impriſonment without Warrant, thruſting one into the Water, &c. are Breaches of the Peace; and for theſe, and ſuch as theſe, a Man may be bound to keep the Peace, and be indicted and fined.

Surety of the Peace is the Acknowledging of a Recognizance to the King, taken by a competent Judge of Record for the keeping of the Peace.

Where a Juſtice may bind to the Peace, &c.

A Juſtice of Peace may, of his own Authority, Motion and Diſcretion, bind a Man to the Peace, and that againſt all the King's Subjects, if he thinks fit. 1. Where an Aſſault is made upon the Juſtice himſelf. 2. When an Aſſault is made upon another in his Preſence. 3. If one in his Preſence threaten another, &c. 4. For Contention in hot Words in his Preſence. 5. If one not authorized go armed offenſively, or with an unuſual Number of Servants, &c. or Servants or Labourers bearing Weapons, againſt the Stat. of 12 *Ric.* 2. 6. he may bind any Perſon by him ſuſpected to be endeavouring to break the Peace. 7. A Perſon brought before him by a Conſtable, who had made an Affray, &c. in his Preſence. 8. A Perſon, who goes about to break the Peace in the Conſtable's Preſence, or aſſaults him, may be carried by the Conſtable before the Juſtice who may bind, &c. 9. He may at his Diſcretion convene before him a Perſon who had broke the Peace (tho' not in his Preſence) and command Sureties of him. 10. He may upon his Diſcretion bind to the Peace a common Barretor. 11. So of Rioters. 12. If one bound break the Peace, the Juſtice ought to bind him anew; but it ſeems not 'till after Conviction upon the firſt Recognizance. 13. Any Juſtice may for the Inſufficiencies of the Sureties, compel one bound to the Peace to find better. *Dalt. cap.* 70.

One fearing that another will burn his Houſe, may demand the Peace againſt him, but not he that is threatned to be impriſoned, or to have his Goods burnt.

It ſeems likewiſe the Peace ſhall not be granted for the Maſter's Fear that another will hurt his Servant, &c. or for that he is at Suit or Variance with his Neighbour. *Lamb.* 85.

The Peace muſt be granted upon Oath made, &c.

When the Peace is granted, upon Requeſt, there muſt be an Oath made by the Party deſiring it, That he ſtands in Fear of his Life, or ſome bodily Hurt, or the Firing of his Houſe by him againſt whom he deſires

ſires it, or by his Procurement; and that he deſires the Peace againſt him, not out of Malice or Hatred, but out of very Fear from his threatning to do it, or procuring it to be done, or otherwiſe.

And it is held, that the Juſtice may not bind to the good Behaviour, nor commit to Priſon, for Refuſal to give Surety upon a general Accuſation, without ſome Particulars. *Paſch.* 23 *Car.* 2. B. *R.*

If he which is bound to the Peace break his Recognizance, he may be indicted for it, for it is a new Offence. *Style* 369.

A Perſon ſaid to be a Member of the Houſe of Commons, bound in a Recognizance of 500*l.* to keep the Peace, for challenging one of the Queen's Witneſſes in an Indictment for Treaſon; and becauſe the Witneſs had accepted the Challenge, he was bound in the ſame Sum. 2 *Vent.* 317. Two bound for challenging one another.

The Warrant of a Commitment for not finding Sureties for the Peace, ought to expreſs in what Sum the Perſon is required to find Sureties; otherwiſe it may be ſo exceſſive, that any Perſon may be conſtrained to remain in Priſon. 2 *Vent.* 22. 2 *Leon.* 184. Warrant ought to expreſs what Sum is required.

A Warrant to find Sureties for the Peace.

Eſſex, ſſ. *For aſmuch as* A. B. *of* C. *hath this Day taken his corporal Oath before me, that* C. D. *of*, &c. *and hath therewithal prayed Surety*; 34 Edw. 3. c. 1. One Juſtice by the firſt Aſſignavimus of the Commiſſion of the Peace.

That he is afraid that A. B. *of* C. *will beat, wound, maim, kill him, or burn his Houſe*;

That A. B. *of* C. *hath already aſſaulted, beaten and bruiſed him*; *and further hath threatned him in ſuch ſort, that he is afraid that the ſaid* A. B. *will beat, wound, maim, kill, or do him ſome other bodily Harm*; Any of theſe Cauſes are ſufficient. Lamb. 9. 3 Edw. 1. c. 9. W. 1. 1 Ric. 2. c. 4. 4 Hen. 4. c. 1. 2 H. 4. c. 1. 7 H. 4. c. 1.

That A. B. *hath already threatned that he will beat, wound, maim, kill, or do him ſome other bodily Harm, or burn his Houſe*; *and that he is afraid he will accordingly do ſo.*

Where a Warrant is againſt two for the Peace, ſay,

As we for their reſpective perſonal Appearance, &c.
And they will reſpectively in the mean Time, &c.
And if they, or either of theſe, A. B. *and* C. D. *ſhall refuſe ſo*, &c.

Convey

Convey them or him ſo refuſing to the Gaol aforeſaid, &c. *And them or him ſo conveyed there to deliver*, &c.

To receive them or him ſo delivered into the ſaid Gaol, and them or him ſo delivered there ſafely, &c.

Until they or he ſo delivered ſhall find, &c.

of the Peace againſt the ſaid C. D. *Theſe are therefore, in His Majeſty's Name, to command you the ſaid Conſtable, that you do cauſe the ſaid* C. D. *to come before me, or ſome other of His Majeſty's Juſtices of the Peace for the ſaid County, to find ſufficient Security, as well for his perſonal Appearance at the next General Seſſions of the Peace to be holden for the ſame County at* T. *aforeſaid, then and there to do and receive as by the ſaid Court ſhall be enjoined; as that he will in the mean Time, keep his Majeſty's Peace towards his ſaid Majeſty, and all his Liege People, and eſpecially towards the ſaid* A. B. *and if the ſaid* C. D. *ſhall refuſe ſo to do, that then (without expecting any further or other Warrant) you do ſafely convey him to the Gaol aforeſaid, and him there deliver to the ſaid Keeper of the ſame, together with this Precept; commanding alſo you the ſaid Keeper to receive him into the ſaid Gaol, and him there ſafely to keep, until he ſhall find ſuch ſufficient Security aforeſaid. Hereof fail not at your Peril.* Given under my Hand and Seal, at, &c.

If a Man be to find Surety of the Peace or good Behaviour, the Juſtice muſt ſhew the Matter in the Warrant, but need not, if it touch Treaſon, Felony or capital Offences, or Conſpiracy, or unlawful Aſſemblies. *Dalt.* 440. *Crompt.* 148. *l.* 16.

A Mittimus for breaking the Peace.

Eſſex, ſſ. I *Send you herewithal the Body of* A. B. *whom I charge and require you, in his Majeſty's Name, to take into your ſafe Cuſtody (for divers Miſdemeanors committed by him againſt his ſaid Majeſty's Peace) until he ſhall procure two good and ſufficient Sureties to be bound with him in a Recognizance to his ſaid Majeſty, either of them in the Sum of Ten Pounds, and himſelf in Twenty Pounds, to appear before his ſaid Majeſty's Juſtices of the Peace, at the next Seſſions of the Peace to be holden for this County; and in the mean Time to be of good Behaviour towards his ſaid Majeſty and all his Liege People. Whereof fail not*, &c. Given under, &c.

Peers.

IN the Law of *England* none are counted Noble under the Degree of a Baron.

None Noble under the Degree of Baron.

A Nobleman's Promiſe, on his Honour, to keep the Peace hath been held ſufficient. *Dalt.* 267. *Lamb.* 81, 82. and therefore a Juſtice of Peace ought not to grant a Warrant of the Peace againſt a Lord of Parliament; nor can they be arreſted by *Capias*, 26 *H.* 8. *c.* 8. Nor againſt a Dutcheſs, Marchioneſs, Counteſs, Viſcounteſs or Baroneſs; for they have the ſame Privileges that Dukes, &c. have, and ſhall be tried by their Peers. *Dalt.* 267.

Juſtice can't grant a Warrant for the Peace againſt a Nobleman by Birth or Creation.

But this muſt be underſtood of thoſe who are Noble by Creation or Birth; for if they are only Noble by Marriage, and the Husband dieth, and then they marry Gentlemen, they loſe their Dignity. 1 *Cro.* 110. *Dalt.* 267. 6 *Co.* 52, 53.

A Nobleman by Stat. 1 *Edw.* 6. *c.* 12. in all Caſes of Felony (wilful Murder and Poiſoning, of Malice prepenſe excepted) ſhall, upon his Requeſt and Prayer, alledging that he is a Lord or Peer of the Realm, without Burning in the Hand, Loſs of Inheritance, or Corruption of Blood, be adjudged for the firſt Time only as a Clerk convict: But in all other Caſes, wherein Clergy is taken away by any Statute ſince 1 *Edw.* 6. *c.* 12. he is in the ſame Degree as a common Perſon.

In what Caſes Noblemen are to have Clergy.

Where either a Peer or a Lord Spiritual is Party (tho' with others) a Knight muſt be returned of the Jury. 1 *Inſt.* 156.

Knight to be of the Jury, unleſs in criminal Caſes, and then a Peer muſt be tried by his Peers.

This is in Civil Cauſes, or in Caſes of *Præmunire* and Appeals; for in criminal Caſes, upon Indictments at the Suit of the King, tho' it be for the Murder of a private Perſon, yet a Peer ſhall be tried by his Peers.

But then he muſt be a Peer *ratione Nobilitatis*, and not by Reaſon of the Barony which he holds in Right of the Church; for Biſhops have not this Privilege, nor the Sons of Noblemen, if ſuch Sons are not Lords of Parliament.

The Indictment may be either before Commiſſioners of Oyer and Terminer in the County where the Offence was committed, or in *B. R.* if done in *Middleſex*.

The Manner of it, &c.

After 'tis found, the King appoints a Lord High Steward of *England*, by a Commiſſion under the Great Seal, *pro hac vice*; but yet ſuch Commiſſion may be adjourned.

In this the Indictment is recited, and Power given to the Lord High Steward to proceed thereon, *ſecundum Legem & Conſuetudinem Angliæ*; and all the Peers are commanded to attend him, and the Lieutenant of the Tower to bring up his Priſoner. This is the Subſtance of the Commiſſion.

Then two Writs are iſſued out of Chancery, *viz.* a *Certiorari* to remove the Indictment returnable *indilate*, and a Writ directed to the Lieutenant of the Tower to bring up the Priſoner.

There are two Precepts likewiſe made by the ſaid High Steward under his Seal; the one directed to the Commiſſioners of Oyer and Terminer to certify the Indictment; the other to the Lieutenant of the Tower, appointing him the Place and Time when and where he ſhall bring up the Priſoner. And he ſends another Precept to the Serjeant at Arms to ſummon the Peers to appear; which being done, and the Court being ſate, the Clerk of the Crown and the Uſher deliver the Commiſſion and the White Rod to the Lord High Steward, and both are by him re-delivered to them reſpectively, the Uſher keeping and holding the Rod all the Time of the Trial.

Then the three following Proclamations are made by the Serjeant at Arms.

1. To all Juſtices and Commiſſioners to certify Indictments and Records.
2. That the Lieutenant of the Tower return his Writ and Precept; and that he bring the Priſoner to the Bar.
3. That the Serjeant at Arms return his Precept, with the Names of the Peers by him ſummoned.

The Return of theſe Writs and Precepts are read by the Clerk of the Crown, and another Proclamation is made, that the Peers anſwer to their Names; but they are not to be ſworn.

If the Priſoner pleads Not Guilty, he cannot have Counſel to ſpeak to a Matter of Fact, becauſe that ought to be plainly prov'd to the Satisfaction of the Court, to induce them to think him guilty: But if any Matter of Law ariſe, as where a Pardon is pleaded, *&c.* then he is allow'd Counſel to argue that Matter; and

and if the Peers have any Doubt, it ought to be resolved in open Court, in the Presence and Hearing of the Prisoner; and to that End all the Judges attend the Trial.

The Prisoner is either acquitted or convicted by the Majority of the Peers, each of them saying, Guilty, or Not Guilty upon his *Honour*, *seriatim*, beginning with the lowest, and ending with the highest Peer.

How a Woman loseth her Nobility.

If a Woman who is Noble by Birth marrieth a private Gentleman, she doth not lose her Name of Dignity; but if she acquire her Nobility by Marriage, and being a Widow marry a private Gentleman, in such Case she retains her Dignity only by Curtesy.

Perjury.

What Perjury is.

PErjury is where a lawful Oath is administred by any that hath Authority, to a Person, in Judicial Proceedings, and he sweareth falsly in a Matter material to the Issue or Cause in Question, either of his own Accord, or by the Subornation of others.

At Common Law.

And a false Oath in any Court of Record, or in any Judicial Proceeding, is Perjury at Common Law. *Style* 374. *Roll's Abridgment*, 2 Part 257. *Sid.* 274. and is punishable now either at Common Law, or by Statute, by Fine and Imprisonment. 2 *Cro.* 8. 5 *Eliz.* c. 9. *Siderfin* 454. *Raym.* 34.

To make it Perjury at Common Law, it must be wilful and deliberate, and what is affirmed must be false, and it must be absolute and direct, and not as the Witness believes or remembers. It must likewise be in some Judicial Proceeding, either in a Court of Law or Equity, or before Persons in the Country, having Authority to administer an Oath, or by making an Affidavit where the Fact is either falsly affirmed or denied.

It must be in a Matter material to the Issue; for if 'tis in a Thing immaterial, and not tending to the Cause, 'tis not Perjury. *Dalt.* 212.

What is Subornation of Perjury.

Subornation of Perjury is likewise an Offence at Common Law; and this is by procuring another to take a false Oath. The Punishment for Perjury and Subornation, is Fine, Imprisonment and Pillory, and the Offender is for ever after disabled to be a Witness.

Perjury by Statute.

Perjury is alſo puniſhable by Stat. 5 *El. c.* 9. by which it is enacted, That Suborners of falſe Witneſſes forfeit 40 *l.* to the King and Proſecutor, or ſix Months Impriſonment, and to ſtand in the Pillory an Hour, and not be received as an Evidence till Judgment be reverſed. *Note*; On every ſuch Reverſal, the Party grieved to recover Damages againſt ſuch Perſon as did procure the ſaid Judgment reverſed to be firſt given againſt them, or any of them, &c. Perſons by Subornation, or by their own Act, being guilty of wilful Perjury, ſhall forfeit 20 *l.* and ſix Months Impriſonment, &c. as before: Offender not having Goods, &c. to that Value, to be ſet in the Pillory, and his Ears nailed, &c. See the Act. Forfeitures to go to the King and Perſon grieved, and the Juſtices at Quarter-Seſſions may hear and determine theſe Offences. 5 *Eliz. c.* 9. & 14 *Eliz. c.* 11. 1 *Ja.* 1. *c.* 25. 1 *Cro.* 18.

Statute extends only to Perjury in a Witneſs.

But this Statute extends only to Perjury by a Witneſs, and not to Perjury in an Anſwer to a Bill in a Court of Equity, or to Perjury in an Affidavit; neither is a falſe Oath within this Statute, if it is not prejudicial to ſome Party in the Cauſe; nor does it extend to Offenders of this Nature in the Eccleſiaſtical Courts, if the Matter is Spiritual and not Temporal.

Puniſhment of Perjury by Stat. 2 G. 2.

But now by a Stat. made 2 *G.* 2. 'tis enacted, That beſides the Puniſhment already inflicted by the Law, the Court before whom any Perſon ſhall be convicted of wilful and corrupt Perjury, or Subornation, ſhall order him to be ſent to ſome Houſe of Correction for a Time not exceeding ſeven Years, there to be kept to hard Labour during all the Time, or otherwiſe to be Tranſported for ſeven Years, as the Court ſhall think moſt proper; and if Tranſportation be directed, the ſame ſhall be executed as is provided by Law for Tranſportation of Felons: And if any Perſon ſo committed or tranſported, ſhall voluntarily eſcape, or break Priſon, or return from Tranſportation before his Time is expired, he ſhall ſuffer Death as a Felon, and ſhall be tried in the County where he ſo eſcaped, or where he ſhall be apprehended.

This Act not to extend to *Scotland*.

No Attainder of Felony by this Act ſhall work any Corruption of Blood, Loſs of Dower, or Diſheriſon of Heirs.

This Act to be in Force for five Years from the 29th of *June*, 1729, and from thence to the End of the next Seſſion of Parliament.

The

The safest Way in a Prosecution for Perjury, is by Indictment at Common Law, because so much Certainty is not required in that Prosecution, as is upon the Statute.

The best Way of Prosecution is by Indictment at Common Law.

One Justice may bind the Offender over to the Sessions.

There may be Perjury in an Answer in Chancery, tho' not in a Matter charged in the Bill, but then the Indictment must be laid at Common Law, because 'tis not material to the Issue; as it must be likewise for a false Affidavit taken before a Master in Chancery, or for a false Answer; for these cannot be punished by the Statute; because the Statute extends only to Witnesses in Causes between the Parties. *Cro. Car.* 353. 2 *Bulst.* 322.

If any thing false be inserted in a Deposition, 'tis not Perjury, upon the Statute, *Cro. Car.* 353. unless it be contrary in a Matter particularly charged in the Interrogatories, because the Commissioners who administer the Oath have not Power in any thing not charged in the Interrogatories. *Sid.* 274.

False Deposition no Perjury, unless, &c.

If a Man call another perjur'd Man, he may bring his Action on the Case; but an Action will not lie for calling another forsworn Man. 23 *H.* 8.

Where Action lies for Words.

If a Man swear in common Discourse, that he has a Property in a Thing when really he has not; or a Constable who is sworn to execute his Office truly, and doth not; these and such like Oaths are called Extra-judicial, and not punishable as Perjury.

Swearing in common Discourse Extra-judicial.

If an Officer sworn take other Fees than are allowed and incident to his Office, he committeth Perjury. *Cro.* 57.

A Man is convicted of Perjury at Common Law, the King may pardon and restore him; *aliter*, if he is convicted on 5 *Eliz. c.* 9. for that says expresly he shall not be a Witness till the Judgment of Conviction be reversed.

Conviction at Common Law may be Pardoned, but not by Statute.

A Man may be indicted of Perjury for making a false Affidavit, by the Common Law, tho' not upon Stat. 5 *Eliz. c.* 9. *Mich.* 12 *Ja.* 1. 1 *Roll's* 79. *Mich.* 20 *Ja.* 1. 2 *Roll's* 244.

M. was indicted on 5 *Eliz. c.* 9. for Perjury before a Commission for examining Witnesses in Chancery, and the Indictment was quash'd in *B. R.* 1. Because it was not set forth that the Commission was under the Great Seal, so that it might appear that the Commissioners had Power to take an Oath. 2. Because the Indictment recited the said Statute, and shews in what

Cases of Perjury.

Particular the Oath was falſe, but did not ſhew what the Iſſue in Chancery was, ſo that it might appear whether what was ſworn was material to the Iſſue. *Hill.* 21 *Ja.* 1. 2 *Roll's Rep.* 427. *Cr. Eliz.* 148. *Lacre's* Caſe.

Perjury in a Witneſs is puniſhable by the Common Law. 12 *Co.* 101. *Hugh Manneg's* Caſe. 3 *Inſt.* 164. *Mich.* 6 *Ja.* 1. 2 *Cro. p.* 212.

Indictment on Stat. 5 *El. c.* 9. muſt ſet forth the Judicial Proceedings, and the Oath taken to be material in ſomething to the Iſſue between the Parties, elſe nought. *Cr. Car.* 152. 3 *Inſt.* 165. 2 *Bulſt.* 322. 1 *Roll. Rep.* 79. 2 *Lev.* 292. *Yelv.* 120. *Noy* 80. *Latch* 38, 132. 4 *Lev.* 105. *Godb.* 171, 179.

L. F. was indicted upon 5 *Eliz. c.* 9. for Perjury, in giving falſe Evidence to the Grand Inqueſt at *Wisbich* Seſſions, upon an Indictment for a Riot. The Indictment of *L. F.* was removed into *B. R.* and *L. F.* was diſcharged of that Indictment: For that Stat. has two Branches, firſt againſt Suborners or Procurers of Perjury, and that is in Matters depending by Bill, Writ, Action or Information; ſo that *L. F.* was out of this Clauſe. And the ſecond Branch (and upon which *L. F.* was indicted) provides againſt them who commit Perjury by his or their Depoſition in any of the Courts above-mentioned, or in being examined *in perpetuam rei memoriam.* And tho' this Clauſe be general, and not reſtrained by any Words to ſuch particular Suits by Bill, *&c.* as the firſt was; yet, in good Conſtruction, this Branch ſhall have Reference to the firſt, and ſhall be expounded by it; for one Part of the Act expounds the other. 5 *Co.* 99. *Flower's* Caſe. 40 & 41 *Eliz. Paſch.* 30 *Eliz.* 3 *Leon.* 201. *Matthew's* Caſe.

Caſes of Perjury.

R. was indicted for Perjury upon 5 *Eliz. c.* 9. ſuppoſed to be committed in his Anſwer in the Star-Chamber, and his Examination upon Interrogatories there; but becauſe he was not examined as a Witneſs, nor *in perpetuam rei memoriam*, he was diſcharged. *Mich.* 31 & 32 *Eliz. Cro. Eliz.* 448. *Rither's* Caſe. *Hil.* 5 *Ja.* 1. *Yelv.* 120. Sir *Robert Miller's* Caſe.

A Man took an Oath in the Court of Requeſts in a Buſineſs there depending concerning Matter of Freehold, and was proſecuted for Perjury; and the Queſtion was, Whether he was perjured or not; the Court of Requeſts having no Juriſdiction in Matters which concern Freehold. Reſolved by all the Judges of *England*, that tho' the Matter ſworn was in Fact falſe, yet it relating to a Matter of Freehold, whereof the Court

of Requeſts had no Juriſdiction, it was not Perjury, and he was acquitted. *Hill.* 8. *Ja.* 1. 1 *Bulſt.* 107, 108. *Yelv.* 3.

A. was proſecuted for Perjury in making a falſe Affidavit before Sir *Robert Rich*, who was one of the Maſters in Chancery; and ruled to be no Perjury, being upon an Affidavit, and not ſworn in Court. *Latch* 38 & 133. *Luthers* verſ. *Holland.*

An Indictment at *Kingſton upon Thames*, upon the Stat. for Perjury, was quaſhed for two Cauſes. 1. It is not expreſs'd in what County *Kingſton* is. 2. It doth not expreſs how the Party was perjured; for it ſhews not in what Cauſe it was, nor that it was in giving any Evidence upon Oath as Witneſs in any Cauſe. *Trin.* 24 *Car.* 1. *B. R. Style* 116. *Cro. Eliz.* 137. *Stedman's* Caſe, and *p.* 148. *Fane's* Caſe. *Cro. Eliz.* 428.

An Indictment of Perjury at Seſſions was quaſh'd, becauſe it did not appear that any of the Juſtices, before whom it was taken, were of the *Quorum*. *Trin.* 24 *Car.* 1. *Style* 123, 124.

Caſes of Perjury.

An Indictment upon Statute 5 *Eliz. c.* 9. againſt Perjury, was quaſh'd, becauſe the Indictment ſet forth that the Oath was taken before Baron *Atkins* and Serjeant *Turner*; but it doth not ſay where the Oath was taken. *Trin.* 24 *Car.* 1. *B. R. Styl.* 126.

D. was indicted upon 5 *Eliz. c.* 9. for Perjury; and the Indictment was, that *tacto per ſe ſacro Evangelio falſo depoſuit*; but it was not directly alledged that he was ſworn. The Indictment was diſcharged; for the Juſtices ſaid when ſuch a heinous Crime was objected againſt one, it ought to be fully alledged, otherwiſe it is not good. *Cro. Eliz.* 105. *Dinſlowe's* Caſe.

L. and *H.* were indicted upon the 5 *Eliz. c.* 9. for Perjury, and diſcharged, becauſe the Indictment was *falſo & corruptive*, but not *voluntarie*. *Cr. Eliz.* 147. *Lembro* and *Hamper's* Caſe, 201, 30.

The Defendant having made an Affidavit in *C. B.* and appearing in Court upon a Summons, confeſſed that he made it, and that it was falſe; whereupon the Court recorded his Confeſſion, and ordered that he ſhould be taken into Cuſtody, and ſtand on the Pillory, *&c.*

It was objected that his Confeſſion was not a Conviction, but only Evidence of his Guilt, and that he ought to be brought before the Court judicially, by Indictment, and convicted thereon: Beſides, the Court of *C. B.* hath not Juriſdiction in this Caſe, it being criminal; but *per curiam*, the Confeſſion of a

Crime is the ſtrongeſt Evidence againſt the Criminal himſelf; and the Statute 5 *Eliz. c.* 9. gives Power to hear and determine this Offence by Inquiſition, &c. or otherwiſe, by which Word the Confeſſion of the Party may be intended, and the Puniſhment by Pillory is inflicted by this Statute, which ſhews that the Court proceeded on the Statute; but it is likewiſe an Offence at Common Law. *Trin.* 9 *Geo.* C. B. *The King* verſus *Thorogood.*

On an Information for Perjury, there was a Verdict for the King: The Information was *Memorandum*, that Sir *T. F.* Knt. giveth to the Court to underſtand, and to be informed, that in *Hillary* Term 1659, *in Rotulis continetur ſic*, that *D.* brought an Action; and ſo recites the whole Record and Trial; and that the Defendant *falſum præſtitit ſacramentum*, at the ſaid Trial, &c. It was objected in Arreſt of Judgment, that to ſay in *Rotulis continetur*, that the Defendant took a falſe Oath, is not a poſitive Charge; for it ought to be after Reciting the Proceedings, & *ulterius dat. cur' hic intelligi*, that the Defendant took a falſe Oath; but adjudged that the Record itſelf being a Record of the Court, the Judges will take Notice and conſider what is poſitive in it.

Information for Perjury, ſetting forth that the Defendant ſwore that Mr. *Stroud* about the Middle of *July* 1681, was at *Newnham*, * *innuendo Newnham* in *Devonſhire*, when in Truth he was not; there was a Verdict for the King; but the Judgment was ſet aſide, becauſe the Word *Newnham*, without mentioning any County, is very uncertain, and might be as well in one Place and County as in another; and 'tis not reſtrained by a bare *Innuendo* to *Devonſhire*, not being done by Way of Averment; ſo it may ſerve to explain a Thing antecedent, but never to add new Matter: And if ſo, then this is conſtructive Perjury, which the Law will not allow. It is true, this is an Information upon the Statute, but yet it ought to be as certain as on an Indictment. The Difference is that where the Conviction is on the Statute, Diſability is Part of the Judgment; but if at Common Law, then Diſability is the Conſequence of the Conviction; therefore in the laſt Caſe, a Pardon reſtores him to be a Witneſs, but not in the other; for there he muſt reverſe the Judgment.

* There muſt be an Averment, that what he ſwore was not true, otherwiſe the Word Falſe will not do.

Perjury in the Spiritual Court, or in a Court-Baron, is puniſhable at Common Law; but where the Indictment is upon the Statute, it muſt appear to be committed in a Court of Record; as if the Defendant is

Where Perjury in Spiritual Court, &c. is puniſhable.

indicted for procuring a Witneſs to take a falſe Oath before the Town-Clerk of *London*; this is not within the Statute; for it is *coram non judice*; and the Subornation muſt be to give Evidence in a Court of Record.

If an Indictment be grounded upon the Common Law, there needs not ſo great a Certainty in it, as if brought on the Statute. *Sid.* 106.

My Lord *Coke* in his 3d *Inſtitute* 163, in his Paraphraſe on this Statute, tells us that the Indictment muſt ſet forth the judicial Proceeding: It muſt alſo ſhew that the Oath was taken in ſomething material to the Iſſue, becauſe the Statute gives the Remedy to the Party grieved; and if the Depoſition is not in a Thing which is conducing to the Iſſue, the Party is not grieved. *Cro.* 152. 3 *Inſt.* 165. What the Indictment muſt ſet forth.

Making a falſe Affidavit, may be puniſhed as aforeſaid, by an Indictment at Common Law; and in ſuch Caſe the Affidavit muſt be filed; and after the Perjury is aſſigned, you muſt conclude *prout patet per Recordum*. *Styl.* 336. 2 *Bulſt.* 322. 1 *Roll. Rep.* 79. 3 *Leon.* 201. *Yelv.* 120. *Noy* 80. *Latch* 38, 132. Where Indictments good at Common Law.

But if it appears that the Oath was made in ſomething conducing to the Iſſue, ſetting forth that the Maſter had Power to adminiſter an Oath; the Indictment may be good upon the Statute. 4 *Leon.* 105. *Godb.* 71, 179. Where upon the Statute.

If an Indictment is at Common Law, ſuppoſing the Perjury to be committed in a Depoſition to Interrogatories in Chancery, you need not ſet forth to what Interrogatory; but if 'tis upon the Statute, then you muſt ſhew that the Commiſſion was under the Great Seal of *Great Britain*, that it may appear to the Court, the Commiſſioners had Authority to adminiſter the Oath; and you muſt aſſign the Perjury to be in a Point conducing to the Iſſue in Chancery, and ſhew how it concerned the ſame.

So alſo if it be upon the Statute, it muſt appear to be wilful Perjury; for if it is that the Defendant *falſo & deceptive depoſuit*, it is not good, though the Indictment concludes, & *ſic commiſit voluntarium Perjurium*, becauſe the one is no poſitive Allegation, that he did it wilfully, and the other is but a wrong Concluſion from the Premiſſes. It muſt be wilful Perjury.

A Man is puniſhable on the Statute for a falſe Oath before a Steward of a Leet. *Styl.* 324. 29 *Car.* 2. *c.* 5. *Sid.* 106. 2 *Rol. Rep.* 427. *Cro. Eliz.* 428. 2 *Leon.* 211. *Cro. Eliz.* 147, 201. *Het.* 12.

If a Man wage his Law, he is a Witneſs for himſelf, but not puniſhable by the Statute. *Noy* 128. If a Man ſwears the Truth, and doth not know it, he is Guilty of Perjury. *Het.* 97.

To ſay only *tacto per ſe ſacroſancto Evangelio depoſuit*, is ill, becauſe no poſitive Allegation that he was ſworn. *Cro. Eliz.* 104.

If in reciting the Action you ſhould miſtake the Term in which it was brought, this is only circumſtantial; and if it appear to be between the ſame Parties, and in the ſame Cauſe, 'tis good; for the Defendant cannot be doubly charged in ſuch Caſe. *Godb.* 88.

Indictment for Subornation, muſt ſet forth what the Perjury was.

The Defendant was found Guilty, for that he *movebat perſuadebat & ſubornavit J. C.* to ſwear that ſeveral Men were at ſuch a certain Place, who really were at that Time in another Place; but upon a Writ of Error the Judgment was reverſed, becauſe the Indictment did not ſet forth that any Oath was made; for it is not enough for one to ſay that the Defendant ſuborn'd another to commit Perjury, but he ought to ſhew what Perjury it is; which cannot be done unleſs an Oath was made. 3 *Mod.* 122.

If Proſecutor will not, Defendant may try it by Proviſo.

If iſſue be joined upon any of theſe Indictments, and the Proſecutor will not try it, the Defendant may bring it on by Proviſo, though it is in the Caſe of the King, becauſe it is for the Benefit of the Subject not to lie under ſuch an Imputation.

No Certiorari, nor no new Trial to be granted.

And becauſe the Fact ſhall be tried, the Courts above do not grant *Certiorari's* to remove theſe Indictments, or quaſh them upon Motions before Trial.

Neither after Trial do they grant a new One, tho' there is apparent Cauſe; but this is only in Caſe the Defendant be acquitted; for where he is found Guilty 'tis otherwiſe. *Sid.* 49. 1 *Lev.* 9.

Convicted on Statute, muſt bring a Writ of Error before he can be reſtored to his Credit.

J. was convicted of Perjury upon the Evidence of *R.* and afterwards *J.* convicted *R.* of Perjury, in the very ſame Matter; but before *J.* can be reſtored to his Credit, he muſt bring a Writ of Error to reverſe the Judgment upon the firſt Perjury. *Sid.* 217.

Caſes of Perjury.

B. a Midwife, was indicted for Perjury. The Caſe was thus:

One *D.* Tenant for Life, Remainder in Tail to his Son; and for Want of ſuch Iſſue to his Daughter, &c. died: His Widow ſoon after his Death declared that ſhe was delivered of a Daughter; and upon a Trial in Ejectment between the Infant and

him

him in Remainder, it was proved that ſhe was delivered by Circumſtances uſual in ſuch Caſes. But the Midwife depoſed that this was the Child of a poor Woman, which ſhe bought of the Mother for Half a-Crown; and that ſhe conveyed it into the Bed to Mrs. *Dormer*, who cried out, and then the Midwife took the Child from her; and that there was a Bladder of Blood, and ſome other Things provided by her, to reſemble the After-birth. The Jury gave Credit to the Midwife, and acquitted her of the Perjury. *Sid.* 377.

B. was Defendant in a Suit in Chancery, and made Affidavit that *C.* was ſo ill that he could not travel; but at the Hearing of the Cauſe, *C.* appeared and ſaid he had not been ſick, but that *B.* had deſired him to feign himſelf ſick in Bed, only that he might depoſe he left him ſo. The Lord Keeper *Egerton* ordered both Parties to attend, and to be examined on Interrogatories, and *B.* denied the Practice; but *C.* affirmed it, produced Witneſſes who very plainly proved it. Now this being double Perjury in *B.* firſt in making a falſe Affidavit, and then afterwards denying the Practice on Interrogatories, he was fin'd 20 *l.* to the King, and committed. And this is the rather mentioned, becauſe there have been ſome Doubts whether Chancery could puniſh Perjury.

Witneſs for the King can't be puniſh'd by Indictment, &c.

Price was indicted upon the Statute, for that he being produced as a Witneſs for the King, upon a Trial in an Information, he did forſwear himſelf, and ſhewed wherein; and it was held, that a Witneſs for the King cannot be puniſhed by an Indictment, which is meerly at the Suit of the King; for he cannot puniſh his own Witneſs, but he may be proſecuted upon the Statute by an Information, becauſe one Moiety of the Penalty goes to the Informer.

Sir *J. J.* obtained a Verdict againſt one *P.* who indicted the Witneſs for Perjury: And this coming to a Trial, Sir *J. J.* ordered his Servants to beat the Witneſſes who were to prove the Perjury; which was done, ſo that they could not appear when the Trial came on; by Reaſon whereof the Defendants were acquitted. And becauſe after an Acquittal in a criminal Caſe, a new Trial cannot be granted; therefore the Court directed an Information againſt Sir *J. J.* for this Offence, who was convicted upon it, and fin'd 1000 *l.* and bound to his Good Behaviour for a Year. 1 *Leon.* 124. *Sid.* 153.

Indictment for Perjury in a Depoſition in Chancery.

Eſſex, ſſ. JUR', &c. quod R. G. de R. in Com' pred' Yeoman nono die Auguſti Anno Regni, &c. apud R. pred' in Com' pred' coram J. S. & P. M. Arm' Commiſſionar' virtute brevis dicti Dom' Regis de Commiſſione extra curiam Cancellarie ſue apud Weſtm' in Com' Midd' preantea emanantis & pred' J. S. & P. M. direct' pro examinatione teſtium tam ex parte J. L. de L. in Com' pred' Gen' querentis quam ex parte C. H. de B. in Com' pred' Ar. Defendentis in quadam cauſa cauſa ſive materia inter ipſos J. L. & C. H. tunc in dicta curia Cancellarie in variantia dependen' p titulo unius meſſuagii cum pertin' in H. pred' perſonaliter conſtitut' & tunc & ibid' exiſtens teſtis product' p pred' J. L. ad teſtificand' & deponend' in cauſa pred' ex parte ipſius J. L. & juratus p dictos Commiſſionarios ad veritatem dicend' ſuper interrogatoriis ei adtunc & ibid' p dictos Commiſſionarios ex parte pred' J. L. miniſtrat' dixit & ſuper ſacram' ſuum voluntarie & corrupte depoſuit & affirmavit in his Anglicanis verbis ſequen' viz. (To the ſixth Interrogatory, he ſaith that the ſaid Meſſuage was uſed, &c.) prout per pred' depoſitionem pred' R. G. inter alia per prefat' Commiſſionarios in dicta Cancellaria certificatam & miſſam ac ibid' de recordo remanen' plenius apparet ubi revera & in facto pred' meſſuagium non occupatum fuit, &c. & ſic ibidem R. G. dicto nono die Auguſti Anno ſuprad'icto apud R. pred' in Com' pred' coram prefat' J. S. & P. M. Commiſſionariis dicti D'ni Regis (ut prefertur) exiſtentibus voluntarie & corrupte perjurium commiſit voluntarium & corruptum contra formam ſtatuti in hujuſmodi caſu edit' & provis', &c.

An Indictment upon the Statute of 22 *Car.* 2. *c.* 5. for Perjury in an Affidavit before Commiſſioners extraordinary.

Eſſex, ſſ. JUR', &c. quod R. G. de R. in Com' pred' Gen' 9 die Auguſti Anno Regni, &c. apud R. pred' in Com' pred' venit coram T. S. Gen' adtunc Commiſſionar' virtute cujuſdam actus parliamenti Anno Regni D'ni Caroli

Caroli nuper Regis Angl', &c. 29 fact' entitulat' (An Act for taking Affidavits in the Country, to be made uſe of in the Courts of King's Bench, Common Pleas, and Exchequer) nuper edit' & prȝobis' & adtunc & ibid' Juratus exiſten' ſuper ſacroſancta Dei Evangelia (eodem T. S. adtunc haben' ſufficien' authoȝitatem ad miniſtrand' ſacram' prȝefat' R. G. virtute actus Parliamenti prȝed') adtunc & ibid' ſuper ſacram' ſuum prȝed' falſo malitioſe voluntarie & coȝrupte depoſuit jurabit & in ſcriptis affirmabit de & concernen' (here recite the ſpecial Matter, and afterwards the Affidavits in hec verba) Inter R. W. quer' & P. E. Defend' prout per ſacram' prȝed' eſuſdem R. G. in ſcriptis remanen' & in curia dicti Dom' Regis coȝam ipſo Rege apud Weſtm' in Com' Middx' affilat' plenius liquet & apparet ubi revera & in facto (here recite the Perjury) prȝed' R. G. falſo malicioſe voluntarie & coȝrupte depoſuit jurabit & in ſcriptis affirmabit & ſic prȝed' R. G. prȝed' nono die Auguſti Anno Regni, &c. apud R. prȝed' in Com' prȝed' coȝam prȝefat' T. S. Gen' adtunc & adhuc Commiſſionar' virtute prȝed' actus Parliamenti exiſten' adtunc & ibid' haben' ſufficien' authoȝitatem ad adminiſtrand' prȝed' ſacram' prȝefat' R. G. falſo malitioſe voluntarie & coȝrupte commiſit voluntarium & coȝruptum perjurium contra foȝmam ſtatut', &c.

Petition.

PErſons ſolliciting, labouring, or procuring the Getting Hands or other Conſent of above twenty to any Petition, Complaint, Remonſtrance, Declaration, or Addreſs to the King, or either or both Houſes of Parliament, for Alteration in Church or State, unleſs by Conſent of three or more Juſtices, or major Part of the Grand Jury, at the Aſſizes or Seſſions of that County or Diviſion where the Matter ariſes; or if in *London*, by the Mayor, Aldermen, and Common Council; or repairing to the King, to deliver ſuch Petition, &c. with above ten Perſons in Number, ſhall forfeit a Sum not exceeding 100 *l.* and ſuffer three Months Impriſonment, without Bail.

Solliciting to get above 20 Hands to a Petition to the King, &c. forfeits 100 *l.*

It muſt be preſented at the Aſſizes or Seſſions within ſix Months after the Offence, and proved by two or more credible Witneſſes.

But

Any not above ten in Number, may present it.

But any not exceeding ten in Number, may present any Grievance to a Member of Parliament after his Election, during the Parliament, or to the King; and both or either House of Parliament may address themselves to the King. 13 *Car.* 2. *c.* 5.

By Stat. of 1 *W. & M. c.* 2. It is declared that it is the Right of the Subjects to petition the King; and all Commitments and Prosecutions for such petitioning are illegal.

Petty Treason. See Treason.

Pewter.

19 H. 7. c. 6.

JUstices at Quarter-Sessions after *Michaelmas*, yearly, shall appoint Searchers of Pewter and Brass; and if Searchers find any not lawful Metal, may seize it for their own Use and the King's. 19 *H.* 7. *c.* 6. See the Act.

Physicians.

1 M. c. 9.

JUstice or Justices to assist the President and other Persons authorised by the College of Physicians, to search Apothecaries Shops for bad Drugs; and for putting in Execution the several Acts of Parliament, which concern the said College. 1 *M. c.* 9.

The four Censors of Physicians College may enter all Apothecaries Shops, &c.

By Stat. 10 *G.* 1. *c.* 20. 'tis enacted, That the four Censors of the College of Physicians, calling to their Assistance the Wardens of the Apothecaries Company in *London*, or one of them, shall have full Power at seasonable Times in the Day-Time, when they think Convenient, to enter into any Shop, House, &c. within the City of *London*, or seven Miles thereof, to search, view and examine, all Medicines, &c. And every Apothecary, or other Person resisting, or hindering such Search, shall forfeit to the President and College, 10 *l.*

If any Person be sued for any thing done in Pursuance of this Act, he may plead the General Issue, and give this Act and the Special Matter in Evidence.

The Acts 14 & 15 *H.* 8. *c.* 5. 32 *H.* 8. *c.* 40. & 1 *M. c.* 9. and also this Present Act shall be publick Acts, and allowed as such by all Judges, Justices, and other

other Persons whatsoever, without Special Pleading the same.

This Act was to continue in Force for three Years; and from thence to the End of the then next Session of Parliament, but was continued by an Act 13 G. 1. for three Years longer, and from thence to the then next Session of Parliament.

Pilchards.

BY Stat. 13 & 14 *Car.* 2. *c.* 18. Suspicious Persons flocking together about the Boats, Nets, and Cellars, belonging to the *Pilchard-Craft*, upon the Coast of *Cornwal* and *Devonshire*, being warned by the Company or Owners of the Boats and Cellars, to be gone; and refusing so to do, forfeit 5 *s.* to the Poor, and to be set in the Stocks. Conviction by one Witness before one Justice. 13 & 14 Car. 2. c. 18.

Pick-Pocket. See Felony.

MY Lord *Hale* calls this Larceny from the Person, without putting him in Fear; for 'tis done *clam & secrete*, without his Knowledge. In this Case Clergy is taken away by Stat. 8 *Eliz. c.* 4. if the thing stole be of the Value of 12 *d.* or more; for if it be under that Value, it is still but Petit Larceny; and though the Statute took away the Benefit of Clergy, it did not alter the Offence. Wherein picking a Pocket differs from Robbery.

Therefore to make this Crime capital. 1. It must be done *clam & secrete*. 2. The Thief must have the actual Possession of the Thing taken. 3. It must be without putting in Fear; and 4. It must be above the Value of 12 *d.* Where Capital, where not.

There is a Case in my Lord *Dyer*, where a Felon took away Money to the Value of forty Shillings, or above, from the Person of another in the Highway; and yet, for that he did not put his Person in Fear by Assault and Violence, this was holden no Robbery; and the Offender was allowed his Clergy for the same Felony. *Dalt.* 492.

A Man cuts my Girdle privily, my Purse hanging thereto, and the Purse and Girdle fall to the Ground, but he did not take them up (for that he was espied.) Case of it.

This

This is no Felony; for that the Thief never had an actual Poſſeſſion thereof ſevered from my Perſon. But if he had holden the Purſe in his Hand, and then cut the Girdle, altho' it had fallen to the Ground, and that he took it up no more, then had it been Felony, if there had been above Twelve-pence in the Purſe; for he had it once in his Poſſeſſion. But theſe ſecret and private Takings from my Perſon are no Robbery; for he neither aſſaulted me, not put me in any Fear. *Dyer* 224.

Indictment for this Offence.

Eſſex, ſſ. JURʼ, &c. quod R. G. nuper de F. in Comʼ prædʼ Labourer 9 die Auguſti Anno Regni, &c. apud F. prædʼ in Comʼ prædʼ ſex ſolidos in pecuniis numeratis de bonis & catallis cujuſdam J. S. adtunc & ibiʼ a perſona ipſius J. S. clam & ſecrete & ſine notitia prædʼ J. S. felonice cepit furatus eſt & aſportavit contra pacem dictiʼ Domʼ Regʼ, &c.

Pigeon-houſes. See Game.

To build a Dove-cote no Nuſance.

IT is not a common Nuſance to build a Pigeon-houſe, if there be no Pigeons in it, and the Perſon who builds it is a Freeholder; and therefore not puniſhable in the Leet; for it cannot be a common Nuſance, unleſs it is ſo to all Perſons; but this can be only a Nuſance to thoſe whoſe Corn they eat. 2 *Cro.* 204, 492. *Poph.* 141. *Mich.* 14 *Jac* 1. *B. R. Veſey*'s Caſe. But the contrary was adjudged in *B. R.* 16 *Jac.* 1. in the Earl of *Northumberland*'s Caſe, reported in *Poph.* 141. *Cro. Jac.* 490. *Pl.* 11. *Roll*'s *Rep.* 2.

Pillory.

A Pillory and Tunbrel ought to be in every Leet, or the Lord fined. *Cro.* 114.

This is an Infamous Puniſhment, appointed by ſeveral Statutes to be inflicted on Offenders; *viz.*

By 51 *Hen.* 3. on Bakers.

31 *Ed.* I.

31 *Ed.* 1. on Foreſtallers.
11 *H.* 7. *c.* 4. for falſe Weights.
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5 *Eliz.* *c.* 9. Perjury, or Subornation of Perjury.
7 *Ed.* 6. *c.* 7. Perſons convicted of Breaking the Aſſize of Fewel, unable to pay, &c.
18 *Eliz.* *c.* 5. Informers compounding a Penalty, without Conſent of the Courts at *Weſtminſter*, or delaying or diſcontinuing the Suit, ten Pounds Fine, and Pillory; the Fine to the King and Party grieved.
5 *Ed.* 6. *c.* 14. for the third Offence of Foreſtalling, &c.

Piracy. See Felony.

Piracy not an Offence at Common Law.

PIracy is an Offence, which being committed out of the Land, the Common Law takes no Notice of it, and therefore it cannot be tried by it; but it was tried as a Capital Crime, according to the Civil Law, in the Admiralty Court, before the Statute of 28 *H.* 8. *c.* 15. which alters not the Offence, but only the Method of Trial: *viz.* It ſays that it ſhall be tried according to the Courſe of the Common Law.

No Clergy allowed.

And it being an Offence by the Civil Law, which does not allow the Benefit of Clergy in any Caſe, and not by the Common Law, therefore is there no Clergy allowed. *Moor* 756. *Yelv.* 135. *Noy* 131.

Not pardoned by a Pardon of all Felonies.

It is for this Reaſon that a Pardon of all Felonies will not pardon Piracy, becauſe it is no Felony at Common Law; and therefore there can be no Corruption of Blood upon an Attainder for this Crime, though there is a Forfeiture of Life, Lands and Goods.

No Acceſſary at Land.

Neither can there be any Acceſſary at Land, becauſe the Principal is not a Felon by our Law; but by Stat. 8 *Geo.* 1. *c.* 24. it is enacted, that all Perſons who by the Stat. 11 & 12 *Will.* 3. *c.* 7. are declared to be Acceſſaries to any Pirates, ſhall from thenceforth be Principals,

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cipals, and ſhall be tried as ſuch by the Stat. 11 & 12 *W.* 3. *c.* 7. and being convicted, ſhall ſuffer as by the ſaid Act, without Benefit of Clergy.

By Stat. 11 & 12 *W.* 3. *c.* 7. If any of the King's Subjects commit an Act of Hoſtility on the Sea againſt other of his Subjects, by Virtue of any Commiſſion from any Foreign Prince or State, this is Piracy.

Caſes of Piracy.

If any Maſter of a Ship, Seaman or Mariner, where the Admiral hath Juriſdiction, ſhall betray his Truſt, turn Pirate, run away with his Ship, *&c.* Goods or Merchandize, or yield them up to any Pirate, or ſhall bring any ſeducing Meſſages from any Pirate, or corrupt or attempt any Commander or Mariner to yield up, or run away with the Ship or Goods, or lay violent Hands on his Commander to hinder him from defending his Ship, *&c.* or ſhall confine the Maſter, or endeavour to make any Revolt in the Ship, ſuch Perſon ſhall be taken to be a Pirate, *&c.*

He that ſets forth a Pirate, or doth aid, aſſiſt, maintain, procure, command, counſel or adviſe any Perſon to commit Piracy, who doth it accordingly, is acceſſary to the Piracy; and ſo is the Receiver or Concealer of a Pirate, knowing him to be ſo; and ſuch Acceſſaries muſt be tried by the Common Law as the Principals are by the Statute 28 *Hen.* 8. *c.* 15. which is declared to be in Force, and if convicted ſhall be executed.

And by Stat. 8 *Geo.* 1. *c.* 24. 'tis enacted, That trading with a Pirate, or furniſhing him on the Seas with Ammunition or Proviſion, or Stores of any Kind, or correſponding with him, knowing him to be a Pirate, ſhall be a Felon, and tried according to the Statute of 28 *Hen.* 8. *c.* 15. and 11 & 12 *W.* 3. *c.* 7. and being convicted ſhall ſuffer Death without Benefit of Clergy.

Any Perſon belonging to a Ship or Veſſel, who ſhall forcibly board or enter into any Ship or Veſſel, tho' he doth not ſeize or carry her off, but ſhall throw over Board, or deſtroy any Part of the Goods, ſhall be deemed a Pirate, and be puniſhed as ſuch.

Any Ship or Veſſel fitted out with a Deſign to trade or correſpond with Pirates, the ſaid Ship and all her Goods ſhall be *ipſo facto* forfeited; one Moiety to the King, the other to the Informer, who may ſue for them in the Court of Admiralty.

But this Offence coming very little or not at all under the Cognizance of Juſtices of Peace, no more ſhall here be ſaid of it, than that thoſe who have a mind to have fuller Information about it, may conſult

ſult the Statutes of 28 *H.* 8. *c.* 15. 2 & 3 *Ed.* 6. *c.* 24. 11 & 12 *W.* 3. *c.* 7. 5 *Ann. c.* 31. 1 *Geo.* 1. *c.* 25. 4 *Geo.* 1. *c.* 11. 6 *Geo.* 1. *c.* 19. & 8 *Geo.* 1. *c.* 24.

Plague. See Quarentine.

IF any Perſon infected, or dwelling in an Houſe infected with the Plague, being by a Juſtice or Head Officer, &c. commanded to keep Home, ſhall yet wilfully go Abroad, having an infectious Sore, it is Felony; if no Sore, yet ſhall be puniſhed as a Vagabond, and bound to the Good Behaviour for one Year. 1 *Jac.* 1. *c.* 31.

1 Jac. 1. c. 31. Perſons infected going Abroad, are guilty of Felony.

Juſtices and Head Officers, &c. ſhall appoint Searchers, Watchmen, Keepers, and Buriers in Places infective, give them Directions, and adminiſter an Oath to them for Performance of their Office. *Ibid.*

Juſtices may appoint Searchers, &c.

If any Perſon infected, &c. ſhall attempt to go Abroad, ſuch Watchmen may inforce them to keep their Houſes. *Ibid.*

Two Juſtices or Head Officers may tax every Inhabitant, &c. for the Relief of infected Perſons in the ſame Place; and by Warrant of two Juſtices, &c. may levy the ſame by Diſtreſs; and for Default thereof, &c. by like Warrant may commit ſuch Perſons to the Gaol, 'till he ſatisfy the Taxation. *Ibid.*

Two Juſtices, &c. may tax Inhabitants, &c.

If the Inhabitants of ſuch Place, &c. are not able to relieve their infected Perſons, &c. upon Certificate thereof, by the Head Officer and Juſtices, &c. any two Juſtices near the Place, may tax the Inhabitants within five Miles thereof, for the Relief aforeſaid. *Ibid.*

If not able may tax Inhabitants five Miles round.

If any Infected ſhall be in any Borough, &c. where there are no Juſtices, or in any Hamlet, then any two Juſtices of the County may tax the Inhabitants of that County, and within five Miles of the Place, to be levied as aforeſaid, &c. and ſuch Sums ſhall be diſtributed by Juſtices, or Head Officers and Juſtices. *Ibid.*

All ſuch Taxes ſhall be certified at the next Quarter-Seſſions in ſuch City or County, &c. Univerſities, Cathedral Churches, and the Colleges of *Eaton* and *Winton* are excepted out of this Act. Continued by 3 *Car.* 1. *c.* 4. & 16 & 17 *Car.* 1. *c.* 4.

All ſuch Taxes to be certified to Quarter-Seſſions.

A Justice may at his Discretion appoint Searchers, Watchmen, Examiners, Keepers and Buriers for Persons and Places infected with the Plague, give them their Oaths for Performance of their Offices, and other Directions, as to his Discretion shall seem good, 1 *Jac.* 1. *c.* 31. *Dalt. c.* 6. & 72. *Lamb.* 197.

A Warrant to shut up a House which is infected, and to take care for their present Maintenance.

1 Jac. 1. c. 31. continued by 3 Car. 1. c. 4. & 17 Car. 1. c. 4. Dalt. 145. c. 72. Lamb. 337. 39 Eliz. c. 4. Co. Inst. 3d Part. p. 90.

Whereas we are credibly informed that the Plague is in the House of A. B. *whereof one died; and that divers of the Inhabitants of your said Parish, have resorted to the said House, both before and after the said Party was dead; (and especially* C. D. E. F. *and* G. H. *in the House of* N. M. *by Reason whereof it is feared that they are sick); by which Means the Sickness is like to encrease and spread further in the Town, unless there be speedy Provision made for the Prevention thereof: These are therefore in His Majesty's Name to charge and command you that forthwith you cause the said House so infected to be shut up, and that you appoint a Warden at the Door to keep them from coming forth, and others from going to them; And that you the Church-Wardens and Overseers of the Poor be careful that the Parties shut up be sufficiently provided for, for their present Relief and Sustenance: And further that you cause the said* N. M. *and his Family, to keep themselves within their own Doors; and that in the mean Time he forbear to victual or let any come into his House 'till he hath further Order. And of your further Care and Diligence herein we do expect a continual Account, that we may give further Directions as Occasion shall require. And we further advise and order the Parishioners that they be very careful not to mingle themselves with those that have been of the same infected House: And of this our Warrant we require you to give speedy Notice. Hereof fail not at your peril.* Given under our Hands and Seals, &c.

A Warrant to make a Rate for the Relief of Persons infected.

1 Jac. 1. c. 31. Two Justices.

Essex, ss. *Forasmuch as Information hath been given unto us by Certificate, that the Parish of* A. *within this County, is infected with the Plague; and that*

the

the Inhabitants thereof do find themſelves unable to relieve the poor infected Perſons, and therefore have need of Relief from the adjacent Places five Miles about, according to the Statute in that Caſe made and provided: Theſe are therefore in His Majeſty's Name to command you and every of you to come before us on the Tenth Day of July *next, at Two of the Clock in the Afternoon at* T. *in* N. &c. *and bring with you your Church-Books of Rates for the Poor, to the End that an equal weekly Rate and Aſſeſſment may be made for the Purpoſes aforeſaid. Hereof fail not at your Perils.* Given under, &c.

A weekly Rate made the 9th Day of *Auguſt* by *J. S.* and *P. M.* Eſqrs. two of his Majeſty's Juſtices, &c. with the Aſſiſtance of the Church-wardens and Overſeers of the Poor of the Pariſhes within five Miles Compaſs of the Pariſh of *A.* at this Time infected with the Plague, to be paid by the Inhabitants of the ſame Pariſhes weekly, for their Relief, during the Time of the Infection, according to the Statute in that Behalf provided.

The Inhabitants of the Pariſh of *B.* to pay weekly as followeth:

	l.	*s.*	*d.*
A. B. ——— ———	00	01	00
C. D. ——— ———	00	00	06
E. F. ——— ———	00	00	04
&c.			

A Warrant to levy the weekly Relief.

Eſſex, ſſ. *Forasmuch as there being a Rate or Aſſeſſment made for your Pariſh of* L. (annexed to this Warrant) *for the Relief of the Inhabitants of the Pariſh of* A. *in this County, at preſent infected with the Plague, according to the Statute in that Behalf made and provided: Theſe are therefore in His Majeſty's Name, to command you, that you, ſome or one of you, do forthwith levy and collect the ſeveral and reſpective Sums of Money of the Perſons therein reſpectively named, by Diſtreſs and Sale of the Goods of the Offenders, rendring to the Parties the Overplus, if any be; and the ſame Money ſo by you received, to be paid to the Overſeers of the Poor of the ſaid Pariſh of* A. *and give in the ſame upon your Account, at the*

1 Jac. 1. c. 31. Two Juſtices.

Upon Non-payment to be committed 'till paid, and Arrears thereof.

the End of your Year. Given under our Hands and Seals, &c.

Poiſon.

See Homicide, Title Murder.

Poiſoning, from Treaſon, made Murder.

KIlling a Perſon by Poiſon is ſo villainous a Murder, that it was Treaſon, and puniſhable by boiling to death in hot Water, by 22 *H.* 8. *c.* 89. But that Stat. was repealed by 1 *Edw.* 6. *c.* 12. & 1 *M. c.* 1. and malicioufly poiſoning, by which Death doth enſue within a Year and a Day, is declared to be wilful Murder, of Malice prepenſed.

A Nobleman is to have Clergy in all Caſes of Felony, except in Murder and Poiſoning. Vid. *Clergy.*

Caſes of it.

Killing, the Child in the Womb with Poiſon, if Quick, 'tis Murder, otherwiſe not. 3 *Inſt.* 50.

Indictment, for that he did put *quoddam Venenum, Anglice* Antimony, into a Cup of Beer, and gave it to *J. S.* It was objected that *Venenum* was Latin for *Poiſon* generally, and not for any Species of it; but this was over-ruled. See *Hardr.* 361.

Caſe of Poiſoning.

One brings poiſon'd Drink, and (knowing) perſuades another to drink it, who drank it in the Abſence of the Bringer, and this was held to be Murder. 4 *Co.* 44.

But whoever has a Mind, may find more Caſes of this under the Head *Murder* in Title *Homicide.*

The End of the Firſt Volume.

1758 AUG